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Letter dated 8 March 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

In accordance with Security Council resolution 1617 (2005), I have the honour to transmit herewith the fourth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) and extended by resolution 1617 (2005) (see enclosure). Currently, the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities initiated its consideration of the report with a view to improving the established sanctions measures and their implementation.

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a Security Council document as soon as possible.

(*Signed*) César **Mayoral**
Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Enclosure

Letter dated 31 January 2006 from the Coordinator of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by Council resolution 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities has the honour to transmit to you its fourth report, in accordance with annex I of resolution 1617 (2005).

(*Signed*) Richard **Barrett**
Coordinator

Fourth report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Security Council resolutions 1526 (2004) and 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. As terrorist attacks have intensified in recent months in Afghanistan and Iraq, and continued elsewhere around the world, the Monitoring Team notes that both the core Al-Qaida leaders in Afghanistan and the more active leadership in Iraq are making efforts to extend their influence. Though their tactics, methodology and messages may differ, Al-Qaida and Taliban leaders and associated groups will continue their assault on international peace and security unless met by a sustained and coordinated response from a united international community.

2. The Consolidated List of individuals and entities belonging to or associated with the Taliban and Al-Qaida continues to develop in scope and accuracy, and Member States increasingly regard it, along with the rest of the sanctions regime, as a critical element in the international response to terrorism. The Team offers proposals to improve submissions for listing and the quality of the List itself, so as to ensure that it remains an accurate reflection of the threat.

3. Implementation of the sanctions by Member States continues to improve, although disparities between regions and individual States remain. The Team notes that while the Consolidated List is intended as a preventative measure, most of the listed Al-Qaida-related persons have been criminally charged or convicted. As instructed by the Security Council in its resolution 1617 (2005), the Team reports on various current listing and de-listing initiatives and on assets freeze exceptions in accordance with resolution 1452 (2002), and how these measures relate to effective implementation.

4. The amount of money frozen under the Al-Qaida, Taliban sanctions continues to climb, but at a decreasing rate, and the Team looks at some current sources of terrorist financing and various measures to cut them off. The Team sees improvements in the increasingly sophisticated financial sectors of the world, but notes continuing areas of concern, including those resulting from a lack of resources in less developed States.

5. Despite the travel ban, listed persons continue to cross national borders. The Team reports on the progress made by the international community in restricting the movement of terrorists and their supporters, including the recent joint initiative of Interpol and the Security Council, which resulted in an international notice, complete with identity, description, photographs and fingerprints, for persons on the Consolidated List.

6. The arms embargo is the third essential pillar of the Al-Qaida, Taliban sanctions regime. While the travel ban addresses the ability of listed persons to cross borders and the assets freeze targets their logistical capabilities, it is only the effective implementation of the arms embargo that prevents Al-Qaida and its associates from acquiring locally and inexpensively the materials and training that they need to mount attacks.

7. Member State reporting, or lack of it, continues to pose a problem and deprives the Security Council of crucial information regarding implementation efforts; the Team proposes ways to improve the current system. The Team also considers the growing international concern relating to terrorist use of the Internet, and presents views on that issue, as well as across the range of its monitoring activities.

II. Introduction

A. Al-Qaida: overview

8. The second half of 2005 saw serious attacks in London; Bali; Nalchik, Russian Federation; Delhi and Amman and many more elsewhere. These atrocities took place against a background of constant violence in Iraq, where Al-Qaida claimed the grim milestone of its 800th suicide bombing. A string of threatening statements from Al-Qaida leaders, and many warnings of imminent attacks from security authorities, further suggested that the threat from Al-Qaida-related terrorism remains as persistent as ever, despite the enormous effort of the international community to combat it.

9. In its June 2005 report (S/2005/572), the Monitoring Team pointed to the danger presented by a third generation of Al-Qaida supporters; people in all parts of the world with no direct contact with the Al-Qaida leadership who nonetheless embrace its message and are ready and able to mount serious attacks. Along with security officials from many States, the Team has noted that Al-Qaida leaders appear to be trying to bring new, as yet unconnected cells under their strategic control. Several factors work against them, but if they succeed, the terrorist threat will increase still further.

10. The two main centres of influence on the movement are Usama Bin Laden and Ayman Al-Zawahiri in the Afghan-Pakistani border region and Al-Qaida in Iraq. While their objectives are broadly the same, their appeal and approach have begun to diverge. While the leaders in Afghanistan retain their personal appeal and historic credibility as the founders of Al-Qaida, and are better at pretending that there is a religious justification for terrorism, Al-Qaida in Iraq, whether headed by Abu Musab Al-Zarqawi or a successor, with its stream of headline-grabbing attacks, has the greater appeal to those who crave action.

11. Both the core leadership and the Iraq leadership need to present an appearance of unity. Bin Laden needs to claim a role in Iraq as the current most visible area of Al-Qaida activity, and Al-Qaida in Iraq needs to boast the endorsement of Bin Laden to keep the support of many of the smaller groups that are prepared to follow its lead. Zarqawi's oath of allegiance to Bin Laden in October 2004 and Bin Laden's acceptance of it in December 2004 neither expressed nor led to a cohesive leadership; there are open and serious divisions between them, particularly over the targeting of the Shia by Al-Qaida in Iraq. Activity outside Iraq offers a way for both to build independent networks and guarantee the future of the movement in a post-Iraq phase.

12. Although Al-Qaida in Iraq has attracted many local recruits and has forged a close alliance with insurgent groups, its foreign fighters are still regarded as outsiders, and whatever happens in Iraq, no future government there will involve Al-Qaida or any of its non-Iraqi supporters. While the country remains by far the most important area of operation for Zarqawi as well as a useful base, the attack on the three hotels in Amman in November 2005 is just one sign of his determination to extend his reach. Al-Qaida in Iraq has the potential to build a network of outside contacts through the foreigners who come to join the fight and then return home with close personal bonds and strong loyalties to the organization. Security officials have told the Team that on occasion recruiters for Al-Qaida in Iraq have turned back

untrained volunteers and told them to await instructions and to be ready to support attacks in their own countries. Already senior fighters have left Iraq to gather existing supporters and these fresh recruits into new cells.[1] The aim of Al-Qaida in Iraq is to build a capability to launch attacks wherever targets are available, whether through its own members or in cooperation with existing groups that will work with it or, better still, follow its lead.[2]

13. For Bin Laden, while the situation in Iraq may help attract new fighters to his cause, the manner of the Al-Qaida campaign there tends to undermine its broader appeal. Bin Laden needs to provide a balance to the actions of Zarqawi and to demonstrate his continued global reach by mounting spectacular attacks elsewhere, thus allowing him to regain the strategic path he set before the loss of his Afghan base in 2001. But his opportunities are limited by his need for security, and although there are many Al-Qaida supporters in all areas of the world who would be glad to follow his operational lead, both he and Zawahiri will have to overcome numerous problems before they can impose any real control.

14. Although both sets of leaders may believe Al-Qaida is winning, and they have time on their side, they will be impatient to capture and organize the groundswell of support that Al-Qaida enjoys and to bring it together. Otherwise Al-Qaida will remain a series of independent cells mounting attacks in distinct areas of operation but contributing only incidentally to an overall strategy. For the rest of the world, it does not much matter whether Bin Laden or Al-Qaida in Iraq takes the lead, or even if any rivalry between them exists; the challenge remains to prevent them from achieving their goals and, at the same time, to counter the message that continues to provide them with the opportunity to do so.

B. The Al-Qaida message

15. When Bin Laden declared the creation of the International Front to Fight the Crusaders, Jews and the Americans in February 1998, it was not on the basis of ideology or theology; nor did he offer new tactics. His innovation was to move the target from Muslim countries to the West, particularly the United States of America; and by characterizing his terrorism as a struggle between Islam and its enemies, he was able to bring together several diverse and often competing groups under one banner.

16. Al-Qaida does not offer a coherent ideology, and Bin Laden and the various groups that make up the loose Al-Qaida network have major theological differences. No prominent Al-Qaida leader has completed any formal religious training, nor have the majority of its supporters. Individuals such as Bin Laden, Zawahiri and Zarqawi are not clerics and have no religious authority to issue religious rulings or fatwas. Nonetheless, Bin Laden has been able to take advantage of modern communications to appeal to many Muslims as a spiritual leader who somehow makes violence seem glorious and a duty rather than the terrorism that it is.

[1] For example, Loai Mohammed Haj Bakr Al-Saqa, arrested in Turkey in August 2005.

[2] For example, according to two Member States, Al-Zarqawi has established contact with Mokhtar Belmokhtar, a leader of the Salafist Group for Call and Combat (GSPC), a listed entity active in the Sahel and in sub-Saharan Africa.

17. Capitalizing on events to support his contention that Islam is under attack, Bin Laden has managed to offer a sense of purpose and belonging to many Muslims, poorly informed about their religion, who feel alienated from the world around them. His remoteness since 2001 has added to an aura of myth and mystery. Despite his lack of credentials, his air of religious spirituality is far more convincing and appealing than the shallow arguments for murder put forward by other Al-Qaida leaders. It appeals to a generation that has little confidence in the future and is ready to accept an extreme remedy without the need for a clear vision of the ultimate objective.

18. Although Bin Laden's circumstances have denied him the operational role that he enjoyed before the defeat of the Taliban in November 2001, the content of his January 2006 statement, and the more frequent messages from Zawahiri, continue to call for action and to emphasize political goals. Since the 1980s, these have gone through four main phases: the first was to liberate Afghanistan from Soviet control; the second to support Taliban control of Afghanistan and persuade the United States to withdraw its forces from the Gulf States, particularly Saudi Arabia; the third, from 1998, was to confront the United States and other Western nations through terrorist attacks across as wide a front as possible; and the fourth, from 2003, was to engage all enemies, including in the Muslim world, wherever they could be reached.

19. Based on an analysis of the statements by Al-Qaida leaders, their immediate objectives are to terrorize the West into disengagement from the Middle East and other Muslim States and to persuade Muslims that their world is under attack. By encouraging this atmosphere of confrontation, they hope to gain political influence without having to make clear their long-term aims, given the disagreements that would certainly arise if they tried to say what they were. Insofar as he is able, Bin Laden will continue to direct his terror campaign first and foremost against the United States and Western Europe; but he will also aim to support associated groups with a more local agenda, such as in Chechnya and South-East Asia. Al-Qaida will also continue to mount attacks in Muslim States and seek to establish a stronger presence in areas where central control is weak, such as the Sahel, sub-Saharan Africa and Somalia. In all cases, Al-Qaida will hope that reaction and retaliation will lead to more recruits.

C. The Taliban

20. The Taliban have become nastier. Attacks in Afghanistan increasingly show the influence of Al-Qaida methods in Iraq, with suicide bombings and beheadings becoming more commonplace, and the evidence shown on television.[3] Whether support for the Taliban has increased is another matter. The parliamentary elections took place successfully and the new Government has begun to take shape. Some 640 Taliban have been accepted into the Government's reconciliation programme.[4] But Afghanistan remains vulnerable, and attacks on pro-government mullahs, school teachers and other professionals whose contribution is vital to the future of the country are likely to have the intended effect of slowing the pace of recovery or, in

[3] The Secretary-General's Special Representative for Afghanistan briefed the Security Council on 17 January 2006 that 13 of the 19 suicide attacks since January 2005 had taken place in the last 10 weeks (S/PV/5347).

[4] United Nations Assistance Mission in Afghanistan (UNAMA) estimate as of 7 January 2006.

some places, bringing it to a complete halt. Support for the return of Taliban rule is likely to remain very limited,[5] but with much of Afghanistan out of central control, drug cultivation extending for the first time to all provinces and corruption rampant, Taliban fighters provide an additional source of instability that is exploited by local warlords and others with no interest in good governance.

D. The international response

21. The sanctions regime continues to have an important though limited effect. The impact of the assets freeze, travel ban and arms embargo imposed by the Security Council on its Consolidated List of individuals and organizations associated with Al-Qaida and/or the Taliban is blunted by three factors: the quality and consistency of implementation of the measures by Member States; the relevance and accuracy of the List; and the vulnerability of those on it to the imposition of sanctions.

22. The international response to Al-Qaida terrorism is far from limited to the sanctions regime, but the importance of coordinated international action makes the sanctions regime the focal point around which other practical measures should coalesce. Over the last six months, the world community has begun to address with great seriousness the importance of dealing with the ideas and message of Al-Qaida, to understand its appeal and to address the constituency that is most vulnerable to its attraction. Vital as it is to prevent terrorists from carrying out their attacks, it is clear that terrorism cannot be defeated by security measures alone and that many members of the international community look to the Security Council to introduce measures that limit the means by which Al-Qaida spreads its message as well as to promote programmes that aim to undermine it.

III. The Consolidated List

23. As the Monitoring Team has stated in previous reports, the Consolidated List stands at the heart of the Al-Qaida, Taliban sanctions regime. In the continued absence of a universally agreed definition of terrorism, it provides a list of individuals and entities that the international community agrees are terrorists or their associates. By the end of 2005, the List had 466 entries: 205 individuals and 118 entities associated with Al-Qaida; and 142 individuals and one entity associated with the Taliban. At the same time, the List also contained the names of 17 de-listed individuals and entities.

24. The Committee has continued to encourage all States to submit names and additional identifying information for inclusion on the List and the Team has been active in its support. As a result, in 2005, 18 States submitted names for the Committee's consideration, many for the first time, and the Committee added 28 individuals and four entities to the List, all associated with Al-Qaida. The Committee also de-listed one individual from the Taliban section in 2005 and two from the Al-Qaida section so far in 2006.

[5] UNAMA studies ascribe less than 20 per cent of violence in Afghanistan to Taliban-inspired anti-Government activity.

A. Improving submissions for listing

25. When submitting names, States are encouraged to consult the Committee's guidelines for insight on procedures, but even so, some States may be unclear as to the most appropriate manner in which to submit or the extent of information required. As a result, States may submit a name in a way that prompts the Committee to reject it or to put it on hold for a period of months, if not longer. As well as diverting the Committee's time and resources from other critical work, this may leave the proposing State feeling alienated from or confused about the process, and the Team recommends that, wherever possible, the Committee give a submitting State regular feedback on the progress of its submission when it does not decide within five days whether to accept it.

26. Because of Member State uncertainties, the Team is regularly approached to provide informal procedural advice to countries considering a listing (or de-listing) proposal, but the Team believes, based on its discussions with States, that it would be best if the Committee offered additional guidance and structure. Specifically, the Team recommends that the Committee utilize a standard cover sheet for listing proposals to ensure that States follow the same format and cover all subjects commonly required for a successful listing request. The cover sheet could contain separate boxes for each type of useful identifying information, as well as for each possible basis for listing (for example, the acts and activities that Security Council resolution 1617 (2005) records as included in the definition of "associated with").[6] Even though States need not be obliged to fill every box, use of a standard-form cover sheet would assist States in proposing listings and the Committee in evaluating them.[7] The Team will present a cover sheet to the Committee for its consideration if it finds the idea useful.

27. In addition, the Team recommends that the Committee provide additional guidance for the "statement of the case" required under resolution 1617 (2005) and reflect such information in any cover sheet. In the Team's view, a successful listing is most often linked to a complete and thorough account of the basis for listing, including the nature of the subject's association with Al-Qaida or the Taliban. The Team believes that successful listings generally are factual, avoid unsupported allegations or broad assumptions and reference supporting evidence or documentation to the greatest extent possible. To speed up the approval process, States might be encouraged to provide the Committee with any available supporting evidence or documentation, such as arrest warrants, existing Interpol notices, indictments or judicial decisions or transcripts.

28. To strengthen paragraph 6 of Security Council resolution 1617 (2005), the Team also proposes that States be encouraged to submit a statement of the case that could be publicly released, or at least revealed to requesting States or organizations (such as Interpol) upon the Committee's approval. States could submit a separate, confidential statement of the case, where necessary. In any event, the Team believes

[6] If the Committee approves this recommendation, it could notify States and put the cover sheet on its website. States could then adapt the form according to the relevance of each box to its submission.

[7] The Team's proposed design would aim to conform with that used by the Committee to request the issuance of Interpol-United Nations Security Council special notices (see section VI.C, below) and so should also assist the speed and accuracy of that process.

that all statements of the case submitted should be labelled by States as "confidential" or "non-confidential", so that the Committee knows whether or not they can be released, if necessary.

B. Quality of the Consolidated List

29. Equally important as adding (and deleting) names is improving the quality of existing entries. Many Member States continue to complain that some entries on the List are inadequate or inaccurate, and several have provided additional identifying information in order to help improve them. As a result, the Committee has accepted some hundreds of amendments, with more under consideration. The Team intends to continue to collect as much additional information as possible on selected entries on the List and recommends that the Committee continue to see this as priority work. It also recommends that the Committee should aim to collect as much detail for existing entries as has been demanded for new ones over the last few years.

C. Changes in format

30. In 2005, the Committee approved proposals to: assign a permanent reference for each name on the List; add to the List the version of the name as it would appear in the script used in original identification documents; and place the Taliban names in alphabetical order (S/2006/22, para. 16). The Team and the Secretariat are in the process of preparing these changes for the Committee's approval.

IV. Implementation of the sanctions

31. Implementation of the sanctions continues to improve, but certain challenges persist. In addition to the quality of Member State submissions to the Committee are concerns about the procedures for listing, de-listing and exceptions under resolution 1452 (2002).

A. Chronicle of the listed parties

32. The Team is often asked about the background of the persons on the Consolidated List, specifically what type of conduct precipitated their listing and to what extent their activities have resulted in criminal charges, arrests or convictions. While it is clear that criminal charges or convictions are not a prerequisite for listing, because the List is intended as a preventative rather than a punitive measure,[8] a glimpse into the backgrounds of the listed may provide some insights

[8] As the Committee has noted, "A criminal conviction or indictment is not a prerequisite for inclusion on the Consolidated List, and States need not wait until national administrative, civil, or criminal proceedings can be brought or concluded against an individual or entity before proposing names for the List. Delays in implementation of sanctions only serve to allow Al-Qaida or Taliban supporters an opportunity to circumvent sanctions" (see S/2005/760, sect. II). This principle is in accord with the Financial Action Task Force (FATF) Special Recommendation III — endorsed by the Security Council in paragraph 7 of resolution 1617 (2005) — which proposed that countries be able to freeze terrorism-related assets pursuant to resolutions 1267 (1999) and 1373 (2001) as a "preventative" measure, "based on reasonable

into the threat they pose. Indeed, aside from Bin Laden, Zarqawi, Mullah Mohammed Omar and other well-known terrorists, the public may know relatively little about many of the individuals on the List. Since its last report, the Team has put together an overview of listed individuals and their activities in support of Al-Qaida and the Taliban, and the following represents some of the more salient results.[9]

33. Of the 203 Al-Qaida associated persons on the Consolidated List at the end of January 2006, at least 111 (55 per cent) have been arrested for, convicted of or charged with a criminal offence,[10] most of them for serious and/or violent crimes ranging from murder to participation in terrorist acts such as the 1998 embassy bombings in East Africa, the 11 September 2001 attacks in the United States and the 2002 bombings in Bali. The geographic scope of their activities includes Africa, the Americas, Central and South-East Asia, Europe, the Middle East and the South Pacific.

34. All but four of the 111 have been convicted of or charged with a crime, with 63 (59 per cent) of the 107 being convicted and the remaining 44 (41 per cent) facing charges. Of the 63 convictions, 51 (81 per cent) came prior to listing and 11 (17 per cent) subsequently, with one individual being convicted of crimes both before and after listing. Judicial proceedings were begun prior to the listing of all 44 facing criminal charges. In terms of arrests, 57 (53 per cent) of the 107 have been apprehended, of whom 44 (77 per cent) were arrested prior to their listing, and 13 (23 per cent) subsequently. At least 23 listed persons (21 per cent) who have convictions or charges against them remain at large, while the status of the remainder is unknown or could not be corroborated.

35. Information regarding the listed Taliban remains murkier. Only a small amount of information has been received regarding criminal charges filed against any of the Taliban, which is not surprising given that reconciliation efforts in Afghanistan are still to be completed. At least three of the 142 listed Taliban have been arrested, although the specific charges against them remain unclear.

36. At least three listed Al-Qaida individuals have been reported killed by official sources. Unofficial sources suggest at least six other listed Al-Qaida supporters and four listed Taliban may also have died, including Mohammed Khaksar, the former Taliban Deputy Interior Minister who was reported assassinated in January 2006. Deceased people remain on the Consolidated List, however, until the Committee chooses to remove them.[11]

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grounds, or a reasonable basis, to suspect or believe that such funds or other assets could be used to finance terrorist activity" (FATF Special Recommendation III and corresponding interpretative note).

[9] In conducting this study, the Team relied on information provided to it or to the Committee by Member States. The numbers cited are probably much lower than the reality, given that many more convictions, charges or arrests have been reported in the media.

[10] While official information provided to the Team suggests that up to 45% of listed Al-Qaida associated individuals have neither been charged with nor convicted of a crime, based on their conduct, most of them probably could have been were it not for various legal and technical impediments such as explained by the Team in a previous report (S/2005/572, para. 40).

[11] The Team has recommended the Committee allow for the removal of deceased persons from the List, under appropriate circumstances (see sect. IV.C, below).

B. Specific implementation issues

37. The Committee may wish to consider how to respond to paragraph 11 of resolution 1617 (2005), in which the Security Council asked it to encourage the submission of names and additional identifying information from Member States for inclusion on the Consolidated List. From the time of the adoption of the sanctions to the end of 2005, 31 States have proposed names for listing (although approximately 50 States supported the submission to list Jemaah Islamiyah in October 2005),[12] but many of them, and a substantial number of other States, appear to have no national procedures in place for determining whether and how to do so.

38. The Team recommends that the Security Council and the Committee encourage States to designate or establish national mechanisms to identify and target individuals and entities for inclusion on the Consolidated List based on a clearly identifiable legal authority distinct from the criminal process. A further advantage is that such a mechanism could also be used to identify and target other terrorists, support networks and organizations (that is, non-Al-Qaida or Taliban) that should have their assets frozen and be excluded from the financial system in accordance with paragraphs 1 (c) and 1 (d) of resolution 1373 (2001).

39. States could also be encouraged to vest the administration of the sanctions within a designated agency, with the authority to investigate and impose penalties for non-compliance, thereby ensuring that a national entity was overseeing implementation of the sanctions within the country. This could also alleviate certain due process concerns, because the agency could be charged with receiving and evaluating petitions from residents for de-listing or exceptions pursuant to resolution 1452 (2002) (see sect. IV.C and D below), thus providing listed parties with a national mechanism in which to be heard. This agency also could be the one that provides the requisite notification to listed individuals and entities, pursuant to paragraph 5 of resolution 1617 (2005).

C. Other listing and de-listing issues

40. Issues surrounding the fairness of the Committee's listing and de-listing process continue to occupy the attention of national and international policymakers. Since the Team's last report, the Security Council, the General Assembly and the Secretary-General have all addressed the topic. More than 50 States, from all regions, have mentioned the need for due process and transparency in the Committee's listing and de-listing procedures (S/2005/761, para. 37), and a major regional court has offered its opinion on the issues involved. Moreover, additional reports on listing and de-listing have been requested from at least four different bodies, including the Team.

41. There have been some notable developments. In its resolution 1617 (2005), the Security Council adopted several recommendations that had been proposed both to increase fairness and strengthen the sanctions. The resolution: (a) defined the term "associated with" to provide enhanced clarity to States and private parties about conduct that could result in listing; (b) authorized the release of statements of the case, under certain circumstances, which could strengthen enforcement of the

[12] See http://www.foreignminister.gov.au/releases/2002/fa158_02.html.

sanctions and provide more information on the reasons for particular listings; (c) requested relevant States "to inform, to the extent possible, and in writing where possible, individuals and entities included in the Consolidated List of the measures imposed on them, the Committee's guidelines, and, in particular, the listing and de-listing procedures and the provisions of resolution 1452 (2002)"; (d) directed the Committee to continue its work on its guidelines, "including on listing and de-listing procedures, and implementation of resolution 1452 (2002)", and requested the Chairman to provide progress reports on those issues when reporting to the Council; and (e) explicitly tasked the Team to report on "listing, de-listing, and exemptions pursuant to resolution 1452 (2002)".

42. Subsequently, on 21 September 2005, the Court of First Instance of the European Communities handed down significant decisions in two cases challenging the Al-Qaida, Taliban sanctions regime. The Court upheld the sanctions, and the primacy of the Security Council when acting under the Charter of the United Nations, but also ruled, apparently for the first time, that courts could review Security Council decisions to ensure that they comply with internationally recognized fundamental norms of human rights from which neither Member States nor the United Nations may derogate. Both decisions have been appealed to the European Court of Justice.[13]

43. Days after the European Court's decision, as part of the World Summit in September 2005, the General Assembly entered the debate over listing and de-listing issues. In the World Summit Outcome, the General Assembly noted the importance of sanctions as a means to maintain international peace and security and recommended that the Security Council improve its monitoring of their implementation and effect. The General Assembly also called upon the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions (General Assembly resolution 60/1, paras. 106-109).

44. The Secretary-General responded to the World Summit Outcome in a report dated 25 October 2005 (A/60/430), in which he noted that it was understood that the Council would determine the timing and manner of its consideration of the General Assembly's recommendations regarding sanctions. The Secretary-General tasked the Office of Legal Affairs to begin an interdepartmental process to develop proposals for the consideration of the Security Council. The Office of Legal Affairs expects to be able to deliver its findings to the Secretary-General in the course of the year.

45. Meanwhile, the Security Council's 1267 (1999) Committee continued to review its guidelines regarding listing and de-listing. In a note verbale issued to Member States in January 2006, the Committee stated that with regard to sections 6 and 8, dealing with listing and de-listing procedures, only technical corrections were introduced, since no agreement had been reached so far. Pursuant to paragraph 18 of

[13] See http://curia.eu.int/en/actu/communiques/cp05/aff/cp050079en.pdf. For more information on these cases, and other legal challenges to the Al-Qaida, Taliban sanctions pending around the world, see annex.

the resolution, the Committee reported that it would continue its work with respect to these two sections with a view to updating them, as mandated by the Council.[14]

46. As the Committee continues its work, Member States continue to contribute ideas. Denmark, as a current member of the Security Council, has proposed that the Committee establish an independent review mechanism, in the form of an ombudsman, which could accept petitions directly from listed parties who claim they were unjustly included on the List and unable to get de-listed. The ombudsman would have the authority to consider those petitions, as well as other cases raised on his or her own initiative, and make a recommendation for action to the Committee.

47. Meanwhile, other countries and organizations appear poised to make their voices heard on these matters. As part of a process initiated by the Governments of Germany, Sweden and Switzerland, the Watson Institute for International Studies at Brown University has been commissioned to examine listing and de-listing issues with a view to strengthening United Nations targeted sanctions and due process. The three Governments intend to release the results of the study, including recommendations, and hold a workshop on these subjects in late March 2006. In addition, in late 2004, the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) began to study the implementation of United Nations sanctions and respect for human rights and the results of that work will be discussed at its next meeting, which is also to be held in March 2006.

48. Although many of the Team's own proposals in this area have been acted on, it hopes that the remaining proposals will be considered as the Committee continues its work on the guidelines. These recommendations suggest that the Committee: (a) encourage States, prior to proposing a listing, and without prejudice to its right to continue with its submission, to consider contacting the State of residence and/or citizenship of the proposed designee;[15] (b) clarify the procedure to be followed in cases in which innocent persons with a name similar to a listed party mistakenly have their assets frozen by a State; (c) require that States forward petitions for de-listing to the Committee, even if they object to the particular petitions, so the Committee may make the ultimate determination;[16] (d) enlarge the number of States that may submit de-listing petitions; (e) endeavour to reach a decision on de-listing petitions within a defined period, where possible, and notify the petitioning State of the outcome; (f) clarify that de-listing is available, under certain conditions, both for a party that was designated wrongly and for those who renounce terrorism and demonstrate to the Committee's satisfaction that they are no longer associated with

[14] See also Committee guidelines (http://www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf), note 2.

[15] States may also wish to consult other States with a particular knowledge of the concerned individual or entity in order to add to or check information or invite a joint listing.

[16] Some States have expressed concern that this proposal effectively allows individuals to contact the Committee, which departs from the historical practice of the Security Council. Yet, an integral part of the Team's proposal is the person's petition to his or her Government, thus allowing that Government to consult with the original designating Government and assess the petition before taking a position on it and circulating it to the Committee. To the extent the recommendation allows individuals to contact the Committee indirectly, via their Governments, it should be noted that other United Nations sanctions regimes permit more direct access; for example, the resolution 1572 (2004) Committee concerning Côte d'Ivoire appears to allow an individual to petition that Committee via the United Nations mission of his country of nationality or residence or through a United Nations office. 1572 (2004) Committee guidelines, para. 10 (a).

Al-Qaida or the Taliban; and (g) permit, under appropriate circumstances, for de-listing of deceased persons (S/2005/572, paras. 28, 31, 55-57 and footnote 26).

49. Finally, at the Team's third regional meeting with the heads and deputy heads of the security and intelligence services of seven Arab States and Pakistan, some of the participants suggested, as others have in the past, that the listings have a time limit, or at least be subject to regular review. The Team sees merit in this type of proposal. As the world approaches the five-year anniversary of the September 2001 attacks in the United States and subsequent regular additions to the List, the Team believes it is as important as ever to strengthen the effectiveness of the sanctions regime, while retaining core principles of fairness. In this spirit, the Team wonders about the meaning of "preventative" sanctions, as these sanctions are designed to be. Should the individuals and entities on the List remain there forever, unless and until a particular State takes the initiative to submit a de-listing petition, or should there be a review procedure after a fixed period to ensure that each individual case continues to present a sufficient threat to require a global asset freeze and a ban on international travel? The Team believes the Council or Committee might wish to consider a review period of five years for listings, similar to the five-year review used by Interpol for its notices, to ensure that the List remains an accurate and up-to-date reflection of the threat posed by Al-Qaida, the Taliban and their associates.[17]

50. To avoid creating a backlog in the Committee, the Team recommends that the Committee consider a system of review that allows for automatic renewal of listings on their five-year anniversary, unless the Committee, by consensus, decides that the threat posed by the particular listed party had subsided sufficiently (or been dealt with adequately by the State of residence or citizenship) to allow for their removal from the List. The Secretariat (with the assistance of the Team, if necessary) could circulate the relevant names to the Committee at least 60 days prior to the five-year anniversary of their listing, along with the relevant statements of case. The State that originally submitted the name and the State(s) of residence and/or nationality could be permitted to notify the Committee in writing whether they supported a continued listing and provide, if they wished, additional information, including identifying data. On the five-year anniversary, each name would automatically be placed on the List for another five years, unless all 15 members of the Committee agreed to its removal.

[17] There is some precedent for this approach. In one of its early resolutions against the Taliban, for example, the Security Council limited the sanctions to one year and required Council approval to keep them in force after that time (resolution 1333 (2000), paras. 23 and 24). In addition, some States and international organizations utilize time limits and review periods to ensure the continued accuracy of certain restrictive measures. For example, in the United Kingdom, certain freezing orders, issued by the Treasury against foreign governments or persons who have taken, or are likely to take, any action detrimental to the United Kingdom or its residents, expire after two years (Anti-Terrorism, Crime and Security Act 2001, sect. 8). Another example is Interpol, which requires that every item of personal information contained within its notices, website or database be re-examined every five years (Interpol rules on the processing of information for the purposes of international police cooperation, article 13, located at http://www.interpol.int/ Public/ ICPO/LegalMaterials/ constitution/info/default.asp).

D. Humanitarian exceptions

51. A frequently overlooked aspect of the sanctions regime is resolution 1452 (2002) in which the Security Council defined the so-called "humanitarian exception"[18] to the assets freeze portion of the sanctions and delineated three important rules.[19]

52. Paragraph 1 (a) of resolution 1452 (2002) permits States to unfreeze a certain amount of otherwise frozen assets to allow the payment of a listed party's basic expenses, such as food, clothing, shelter, medicine and legal fees.[20] A State may utilize this exception merely by notifying the Committee of its intention to invoke the provisions of resolution 1452, unless the Committee makes a negative decision within 48 hours.

53. Paragraph 1 (b) of resolution 1452 (2002) permits States to use a portion of blocked funds for "extraordinary expenses". Unlike the paragraph 1 (a) exception, which is deemed approved unless a negative decision is reached by the Committee within 48 hours, the Committee must act to approve a paragraph 1 (b) request before it may take effect. This is presumably because the basic expenses outlined in paragraph 1 (a) may be necessary for life or liberty and so require immediate action, while extraordinary expenses ordinarily would not.

54. Paragraph 2 of resolution 1452 (2002) clarified the assets freeze sanction by noting that States could allow the payment of interest or other earnings on frozen accounts or payments arising from agreements made prior to the date of a party's addition to the List as long as all such interest or other earnings remained subject to the sanctions.

55. From the time of the adoption of resolution 1452 (2002) to the end of January 2006, the Committee received 29 requests for exemptions pursuant to the resolution, involving 23 individuals and two entities. Of these, the Committee approved 25 requests; one was withdrawn after the Committee asked for additional information, and three remain under consideration. The approved requests authorized payments for a variety of items, including: basic expenses and accommodation (17 requests); extraordinary expenses (2 requests); legal representation (6 requests); miscellaneous bank charges (1 request); the sale of a home to settle an outstanding mortgage debt

[18] The Team recognizes the term "humanitarian exception" might be a misnomer, given that the word "humanitarian" does not appear in resolution 1452 (2002) at all. Indeed, some have suggested that a primary reason for the exception was simply to allow listed parties the right to incur legal fees to challenge their designation, rather than to satisfy general humanitarian needs. Given the types of expenses permitted under the resolution, however, it has become widely known as authorizing "humanitarian exceptions".

[19] Resolution 1267 (1999) originally created the "humanitarian need" exception to the assets freeze portion of the sanctions to be approved by the Committee on a case-by-case basis, but it did not outline the circumstances that would warrant the exception, or the process by which it would be approved.

[20] Paragraph 1 (a) of resolution 1452 (2002) defines "basic expenses" as "including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources".

(1 request); and certain expenses of an ongoing business (1 request — see box 1 below).

56. Of the three requests still under consideration, two seek authorization for access to frozen funds for the same individual for the payment of expenses such as food, medical costs and legal fees, but at an amount much higher than similar requests. The other involves a request to pay taxes and legal fees incurred by a listed entity over which a listed person apparently retained some form of control.

57. Certain conclusions may be drawn from this historical record. First, the Committee approved virtually all requests for routine and extraordinary expenses that it received. But while there are 345 individuals on the List, requests under resolution 1452 (2002) have been made for just 23 persons, and by only eight States (all but two from Europe). Even assuming that the whereabouts of a large number of listed persons remain unknown, a great many others have been identified publicly as residing within particular countries and it appears, therefore, that many States ignore resolution 1452 (2002), and simply allow basic expenses for the listed, whether from State funds, a third party or the individual's own resources. Therefore, while listed persons are clearly entitled to basic necessities such as food and shelter, the Team recommends that the Committee do more to emphasize the obligatory nature of the resolution 1452 (2002) requirement of reporting and approval.[21]

58. Indeed, resolution 1452 (2002) serves as more than a vehicle for the provision of humanitarian needs. The process envisioned enhances fairness by enabling the Committee to ensure that reasonably comparable types and levels of basic and extraordinary expenses can be approved worldwide.

Box 1
Open for business

In January 2006, the Committee approved, for the first time, a resolution 1452 (2002) request for an entity, a case that could serve as a model for countries implementing the assets freeze on businesses. The Italian Government made the request on behalf of a listed entity (a hotel) owned by a listed individual. To avoid the loss of the jobs of innocent hotel workers, as well as the revenue stream generated by the business, Italy proposed that a Government agency assume custody and management of the hotel, pursuant to provisions of a soon-to-be-adopted national law. This mechanism would ensure that the listed party did not control the corporate assets and could not divert income to support terrorism. The income generated by the business will pay running expenses, under Government oversight, and any profits will be placed in a frozen account.

Source: Government of Italy.

59. Although resolution 1452 (2002) makes no distinction between individuals and entities, the Team believes that, as a general rule, the Committee may wish to tread

[21] The Team believes that States submitting resolution 1452 (2002) exception requests should be encouraged to provide additional data on the listed parties at issue in order to assist the Committee in improving the Consolidated List.

cautiously when asked to approve expenses to allow entities to continue to operate. The Italian plan described in box 1 above depends on legislation that allows the Government to take custody and manage a business in place of a listed person or his appointees. But while this approach may work well for entities that provide services in a discrete area over which a national government can exercise oversight and control, it may not apply so readily to other types of entities, such as international charitable and/or financial organizations, where money may regularly flow to or from individuals or groups outside the jurisdiction of the Member State.

60. Another potentially troubling aspect of the humanitarian exemptions provision is that, because a private individual or entity is not permitted to petition the Committee directly, it is the listed party's State of residence that determines whether the Committee ever receives a resolution 1452 (2002) petition.[22] As with its views on the de-listing process (see sect. IV.C, above), the Team believes that this undermines the decision-making role of the Committee and recommends that the Security Council and/or Committee instruct States that they must forward to the Committee any petition received under resolution 1452 (2002), letting the Committee know whether they support, oppose or are neutral towards it.

V. The assets freeze

61. Since the Team reported in June 2005, two more States[23] have reported freezing assets and the Team has learned of an additional $5.46 million in frozen funds.[24] This brings the total number of States that have frozen assets under the Al-Qaida, Taliban sanctions measures to 34. States freeze assets in a variety of currencies; taking currency movements into account, the current value of assets subject to the measures is $93.4 million, excluding the five States that have frozen assets but have not provided figures. The assets frozen remain a mix of funds[25] and other economic resources.[26]

62. The Team notes that no State has informed the Committee or the Team that they have located and frozen assets belonging to any of the 23 individuals or one entity added to the List since June 2005.

A. Identifying current sources of finance

63. The number and scale of terrorist attacks being attributed to Al-Qaida demonstrate that the network continues to thrive and to have access to sufficient financial resources to support its activities. Considerable funds are available to Al-Qaida in Iraq,[27] and other groups have managed to raise money through crime or donations. If the general level of Al-Qaida finances may limit elaborate, large-scale

[22] The Team has no information to suggest that any State has refused to forward a resolution 1452 (2002) exception petition to the Committee, but it nevertheless believes the process should be clarified to ensure that this does not occur.

[23] Bangladesh and Ethiopia, although Bangladesh did not report the amount frozen.

[24] Albania ($5,421,686.75) and Ethiopia ($36,383.40) at current rates.

[25] Bank accounts, investment accounts, life insurance policies, mortgages and other credits, shares or interests in companies, etc.

[26] Tangible properties and business entities.

[27] Information received from a Member State.

attacks, it is clearly adequate to fund the low-cost attacks that are currently its hallmark.

64. While new studies claim to document Al-Qaida's financial networks and facilitators, they nearly all relate to the period around 2001. Questions remain as to who is now providing the funds, the origins of this money and how it is moved from one jurisdiction to another. The slowing pace of freezing actions by States suggests a need for more analysis of how terrorists are actually funding their operations. Such analysis should run in parallel with, and inform, continuing efforts to strengthen global regulatory standards.

65. Based on information provided by States, the Team believes that Al-Qaida raises at least as much money from non-criminal sources as it does from criminal ones. Although local cells are known to engage in small-time criminal activity, such as credit card fraud or drug peddling,[28] and the United Nations Office on Drugs and Crime (UNODC) reports that groups straddling the borders between Afghanistan and Pakistan, the Islamic Republic of Iran and Uzbekistan collect transit fees from drug transporters, thus benefiting the Taliban,[29] there is as yet little consistent evidence of large-scale terrorist involvement in drug trafficking or other organized crime.

66. While many States have now introduced better regulatory and investigation systems aimed at countering terrorist financing, it is difficult to assess their impact. They will have prevented some terrorist financing and forced terrorists to use other, possibly less reliable, ways to raise, store and move money. But in addition to introducing stricter financial regulation, States should make more effort to identify terrorist financiers, who are the easiest targets for sanctions and the most vulnerable to them, as well as the financing channels they use, to ensure that further regulation is correctly targeted.

Box 2

Commercial activities funding Al-Itihaad Al-Islamiya in Somalia

During its visit to Kenya and Ethiopia, officials told the Team that a listed entity in Somalia, Al-Itihaad Al-Islamiya, continued to present a significant terrorist threat to the region. The organization ran terrorist training camps and provided sanctuary to listed individuals, including some implicated in the 1998 attacks on the United States Embassies in Nairobi and Dar es Salaam.

The officials said that as well as raising money from sympathizers in Europe and the Middle East, Al-Itihaad Al-Islamiya supported its activities through a variety of commercial ventures. In some cases its involvement was obvious, in some cases it was not, and in some cases the organization benefited by taxing the activity of other businesses. The

[28] Several members of the cell involved in the March 2004 bombings in Madrid were involved in the drug trade, and police searches of their addresses later uncovered narcotics worth over 1 million euros. The explosives used in the attack were reportedly exchanged for 25 kilograms of hashish and a quantity of money (sources: reports by the Spanish Ministry of Interior, Parliamentary Commission and Judge Del Olmo, and Interpol).

[29] UNODC, *The World Drug Report 2005*, available at http://www.unodc.org.

range of activity included the export of charcoal to the Middle East, transport, security and protection services, telecommunications, business centres, hawalas, other financial services, agriculture, hotel and hospitality concerns, and the allocation of coastal fishing rights. Some of these services had a monopoly in some areas and were even used by international aid agencies.

B. Tracing assets subject to the assets freeze

1. Using the Consolidated List

67. Based on information obtained from States, the Team notes that, increasingly, additions and changes to the List are widely circulated to financial institutions and other reporting entities, including banks, non-bank financial institutions and non-financial entities. There appears to be considerable discrepancy, however, in the design of freezing and notification procedures, and the Team believes that a summary of best practice in this area could help States to ensure effective instruments for locating and dealing with assets subject to the measures.

68. It appears that many States see their obligation to freeze assets extending no further than notifying relevant institutions and entities of the measures in place and the groups and individuals subject to them. But if regulatory authorities do not ensure that financial institutions are screening accounts and transactions in an effective and timely manner, the purpose of designation will be lost. At a basic level, the implementation of financial sanctions involves checking current and future customers against the List, whether in hard or soft copy.

69. Because many names can be rendered in a variety of ways, the task of comparing accounts and transactions against the List is a daunting one. In addition, the existence of regional and national watchlists and of lists related to other United Nations sanctions regimes makes checking a considerable undertaking. Trying to do so manually against a paper copy of the List is unlikely to achieve a sufficient level of accuracy, however dedicated the checker. Although even the best technology will not completely stop all money-laundering and terrorist financing activity, checking by computer gives a far greater chance of effective implementation.

70. The printable document format (PDF) of the List available on the Committee's website allows for fast and accurate checking, but it does not flag close spellings nor highlight exact matches when the names of an individual are written in a different order. A better method involves dedicated databases and specialized software; these are now available commercially and some larger institutions have designed their own. In fact, major financial institutions are investing substantial resources in their anti-money-laundering and counter-financing of terrorism compliance programmes, with around 80 per cent of the money being spent on systems designed to screen financial transactions.[30] This investment is expected to continue to rise as reporting entities seek to protect themselves against reputational and regulatory risk.

[30] KPMG Global Anti-Money Laundering Survey 2004: How banks are facing up to the challenge.

71. But smaller entities do not have the resources to develop their own systems, and may find commercially available ones too expensive, and the Team recognizes that a large number of States and their institutions, public or private, will continue to use the List in hard copy. Nonetheless, the Team recommends that the electronic format of the List on the Committee's website should be built on a platform that allows broader search functionality, for example, searching based on phonetics and on close, or alternative spellings. The Team also recommends that Member States should be provided with guidance on how best to make an effective search against the current PDF format. This could be posted on the Committee's website.

72. The Team also recommends that, wherever possible, States should circulate the List to their national institutions in soft copy to facilitate the incorporation of the names into electronic databases. States should also encourage reporting institutions to automate their transactions/account screening processes, for example by seeing this as a mitigating factor when assessing fines for violations[31] or through tax-related incentives. The Team notes the increasing and constructive dialogue between the public and private sector designed to promote the effective implementation of sanctions.[32]

2. Retrospective financial investigations

73. Investigation of the past transactions of a listed party, as with any terrorist individual or entity, can help to identify their present and past associates and their assets. This is an important tool in uncovering financial networks, and the Team recommends that States that report finding and freezing accounts belonging to listed parties do not see their obligation as ending there. They should also examine past transactions as far as records allow, not just to identify associates, but also to spot asset movements that may have anticipated listing or preceded implementation and consider whether these too should be subject to freezing, sharing information with other States, as appropriate. This information could also be passed to the Committee through the checklist introduced by Security Council resolution 1617 (2005).

3. Financial intelligence

74. Over 150 States have established financial intelligence units to analyse suspicious transaction reports (STR) as part of their counter-financing of terrorism effort, however, there is general concern that much of the current guidance provided to entities that submit STRs relates to money-laundering rather than to terrorism. In addition, many financial institutions complain that they have been given little or no information on what to look for as possible indicators of terrorist financing transactions. As a result much of their reporting is without value and there is a marked imbalance between the high volume of STRs generated globally and the very few assets that are found and frozen as a result.

75. The apparent lack of significant impact of the STR regime can be attributed to a number of other factors in addition to the lack of proper guidance on what to report. These include: defensive reporting, which focuses on the type of customer

[31] See Interlaken Process: Targeted Financial Sanctions: A Manual for the Design and Implementation.

[32] For example, the Euro-Atlantic Partnership Council/Partnership for Peace workshop, "Public/Private Cooperation in Combating the Financing of Terrorism", Zurich, 5 and 6 December 2005.

rather than on the character of the transaction and merely aims to protect the institution from possible regulatory action; low staffing levels in financial intelligence units; inadequate training for staff in reporting entities; lack of standardization in the electronic format of STRs, thus impeding analysis, and the sheer quantity of STRs leading to large backlogs in financial intelligence units.

76. Since the STR regime and the financial intelligence units are the backbone of the international community's efforts to prevent terrorist financing, their inadequacy gives cause for concern. States should allot adequate resources to their financial intelligence units, provide regular feedback to reporting entities and ensure that they have a proper understanding of what to look out for based on analysis of current terrorist financing patterns. States should cooperate by sharing relevant information, and the Team recommends that the Committee encourage States to do so.

Box 3

Indicators of possible suspicious activity associated with the Hamburg cell involved in the attacks in the United States on 11 September 2001

The German authorities' investigation of the financial operations of the Hamburg cell involved in the September 2001 attacks in the United States uncovered certain patterns that might have been detectable to alert bank employees and reportable under the STR regime, including the opening of checking accounts by male students from Islamic countries where terrorism was a concern and the use of foreign identity documents with proof of residence supported by student permits. In addition, the accounts were initially opened based on temporary addresses, although, over time, frequent address changes were recorded. Several individuals opened accounts at the same financial institution using a common address. A stronger degree of association emerged subsequently as members of the group opened joint accounts, or granted powers of attorney to each other regardless of family connections or shared nationality.

Money was withdrawn soon after being deposited, usually through a succession of small withdrawals from automated teller machines (ATMs), suggesting cash distribution to a group of people. Frequent ATM balance requests were made, possibly to avoid contact between the depositors and the users of the funds. Use of ATM cards abroad, when the cardholder had not travelled, and deposits made abroad, always in cash, may also have been significant. These showed sources of income not previously disclosed to the bank and suggested that such funds may have been received through alternative remittance systems. Neither deposits nor withdrawals were made by cheque. Nor were credit cards used, except in connection with a period of residence abroad.

Another significant feature was the absence of common debits, for example to meet basic living expenses such as rent, utilities, insurance premiums or automatic payment orders. Most movements into and out of the accounts remained below reporting thresholds. The account holders showed no particular interest in buying savings, insurance or investment

products, in spite of the substantial aggregate amounts credited to the accounts. Another unusual feature was that inward remittances, supposedly meant for student expenses, were subsequently wired to payees overseas.

Source: Office of the German Federal Prosecutor General.

77. The heightened surveillance of the regulated sector has led Al-Qaida to rely increasingly on informal systems for raising, storing and moving funds, and States should continue to look for ways to encourage broad awareness of the sanctions regime among enterprises that could be used by terrorists to finance their operations, and even among the general public.[33] States should encourage as wide a system of reporting as possible.

C. The meaning of asset freezing

78. There are useful definitions of asset freezing,[34] which States may use when designing instruments to implement financial sanctions, but as sanctions are preventative, rather than punitive, and do not depend on any judicial process (see footnote 8), States may recognize an obligation to preserve their value. This has led one State[35] to manage frozen assets rather than merely place them in suspense, and another State[36] is looking at similar methods. The Team believes this approach could have more general application.

79. Financial assets are also susceptible to deterioration in value, whether through changes in market conditions, such as exchange rates, interest rates, inflation, and the like, or through other commercial risks such as the collapse of the bank where they are held, especially in weak banking systems where deposits are not protected by insurance schemes. The Team believes that ideally, frozen funds should be held centrally in low risk, interest-bearing form such as government bonds, or in central banks, to minimize the risk of loss and to ensure proper control.

[33] For example under paragraph 15 of Decree No. 2 of 3 December 2004, the Albanian Government ordered anybody with a contractual obligation towards (the listed) Yasin Al-Qadi, his companies or investments to deposit moneys owing into an account opened by the Minister of Finance at the Central Bank of Albania.

[34] For example, European Council Regulation (EC) No. 881/2002 defines freezing of funds as "preventing any move, transfer, alteration, use or dealing with funds in any way that would result in any change in their value, amount, location, ownership, possession, character, destination or other change that would enable the use of funds including portfolio management". The regulation also defines freezing of economic resources as "preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging".

[35] Albania: the portion of properties attributed to a listed individual, Yasin Al-Qadi, will continue to generate rental income while it is frozen. The properties will be occupied by Government departments, which will pay rent into a frozen account at the Central Bank.

[36] For example, the Committee has agreed to allow a listed entity to continue operating under the close supervision of the Italian authorities, see box 1 above.

80. States should take care to seize or otherwise secure tangible assets that may be sold or otherwise transferred for value when implementing the financial sanctions.[37] The Team notes that many States have only reported freezing bank accounts without indicating what action they have taken against other assets. The Team recommends that where States have seized other assets, they should report their nature and value to the Committee.

D. Regulation of non-profit organizations

81. Abuse of a non-profit organization may take various forms; at worst a charity could be taken over by Al-Qaida terrorists or their supporters. Lessons learned from investigation of listed and other abused non-profit organizations provide the best resource for States wishing to ensure proper safeguards, and States should share whatever information they have. Box 4 below provides a summary of indicators collected by the Team during a conference on related issues.[38]

Box 4
Red flags of abuse of charitable organizations

States that have investigated listed charities have identified the following patterns: informal solicitation of donations; transactions that are more complicated than is necessary; actual use of funds different from stated purpose at time of collection; absence of a donor list; hidden donations; little or no fund-raising expenditure, possibly indicating a few wealthy donors; and funds transfers to the same overseas beneficiary through multiple bank accounts.

Other indicators include funds transfers between bank accounts of related entities; funds transfers through intermediary jurisdictions (for example, off-shore centres) rather than directly to the location of the beneficiary; negotiation of third party cheques and their deposit in foreign bank accounts; lack of involvement by locals in the affairs of the non-profit organization, coupled with very closed control; use of a commercial mail box as an address for correspondence, indicating a possible attempt to conceal actual location; cash debiting schemes, that is, deposits are matched by ATM withdrawals in another country; overlap of corporate officers and the use of the same location by several charities and related corporations and partnerships; and incoming funds transferred as donations to other organizations rather than used directly for charitable work.

[37] Officials told the Team that a listed entity, in a State that has not reported freezing assets, has sold or otherwise disposed of its assets (including properties) since listing.

[38] OSCE Conference on Combating the Financing of Terrorism, November 2005, Vienna.

E. Role of the Financial Action Task Force

82. The recommendations of the Financial Action Task Force (FATF) provide international standards for combating money-laundering and the financing of terrorism and were further endorsed by the Security Council in paragraph 7 of its resolution 1617 (2005), which strongly urged States to implement the FATF 40 recommendations on money-laundering and the nine special recommendations on terrorist financing. One hundred and thirty-four States are now members of FATF, or FATF-style regional bodies, and over 40 States underwent evaluation within this framework in 2005.

VI. The travel ban

83. Listed persons continue to travel, despite the mandatory language of the travel ban, whether via the use of stolen, lost or fraudulent travel documents or through the inattention/disregard of the sanction by Member States. But, in cooperation with Interpol, the Security Council and the Committee have developed new initiatives to prevent the travel of individuals on the Consolidated List.

A. Overview

84. As with the other sanctions, resolution 1617 (2005) continued the travel ban on listed individuals and entities and offered new guidance on ways to strengthen it. The resolution: (a) welcomed the efforts of the International Civil Aviation Organization (ICAO) to prevent travel documents from being made available to terrorists and their associates; (b) encouraged Member States to work within the framework of Interpol, in particular through its database of stolen and lost travel documents, to reinforce the sanctions; (c) urged States to ensure that stolen and lost passports and other travel documents are invalidated as soon as possible and to share information on these documents with other States through the Interpol database; and (d) requested the Secretary-General to take the necessary steps to increase cooperation with Interpol to assist the Committee and States with implementation of the sanctions (resolution 1617 (2005), preamble and paras. 8 and 9).

85. Paragraph 1 (b) of resolution 1617 (2005) contains the same language as in prior resolutions to describe the scope of the travel ban, namely, that States shall "prevent the entry into or transit through their territories" of persons on the List, except in certain defined circumstances. A frequent question has arisen as to the meaning of "transit through"; specifically, whether it also obliges States to prevent the departure of listed persons from their territories. While the Team believes that by adding the words "transit through", the Security Council appeared to forbid more than the simple entry of a listed person into a State's territory, the resolution may not prohibit all "departures from" a territory, because the Council could easily have said so. The Council or Committee may wish to offer guidance on whether a State violates the travel ban by permitting a listed party to depart its territory or under what circumstances this might be allowed.

B. Implementation of the travel ban

86. The Committee might wish to consider several instances of listed persons travelling between States that have come to the Team's attention. Notable examples include Dawood Ibrahim, an Indian crime lord sharing his smuggling routes with Al-Qaida and supporting terrorist attacks, who reportedly travelled to countries in the region around the time of his listing in 2003;[39] Shaykh 'Abd-Al-Majid Al-Zindani, who travelled from Yemen to Saudi Arabia for a conference in December 2005;[40] Fazul Abdullah Mohammed, a Comorian-Kenyan dual national wanted in connection with the 1998 United States Embassy bombings in East Africa, who is believed to have travelled under false identities to Ethiopia, Somalia and the United Arab Emirates;[41] and various Taliban, including Abdul Kabir, a top-level member of the Taliban and former Provincial Governor in Afghanistan, who was believed arrested by Pakistan authorities in July 2005,[42] although this was denied by the Taliban.

87. Besides evading border controls altogether, the primary method by which listed and non-listed terrorists continue to travel appears mainly to be through the use of fraudulent, forged or stolen travel documents. A September 2005 study of foreign-born terrorists who had operated in the United States concluded that about two thirds had engaged in fraud to enter or remain in the country, with more than one third subsequently charged with passport or visa fraud or of making false statements to an immigration official.[43] Many other States, particularly those in Africa and Central Asia, reported similar problems of travel document fraud during the Team's recent visits.

88. Despite the reports of illicit border crossings, there has been notable progress in combating the travel of listed terrorists and their associates. Interpol continued to report an increase in the number of countries participating in its Stolen and Lost Travel documents database, from 75 in June 2005 to 93 Member States (and the United Nations Interim Administration Mission in Kosovo (UNMIK)) as of the end of January 2006, and the database now contains information on more than 10 million stolen and lost travel documents, which States can access to bolster their border security.[44]

89. Member States also continued to report progress in implementing the travel ban measures. Although more States reported their plans to introduce biometric travel documents and to computerize border control posts to the Team, many

[39] United States Department of Treasury fact sheet, available at: http://www.treas.gov/press/releases/js909.htm; Testimony before the United States House of Representatives, available at: http://www.house.gov/international_relations/108/rama1029.htm. Although official sources confirmed Dawood's travel near the time of his listing, the Team has not confirmed media reports that he also travelled in 2005.

[40] Public information corroborated by a Member State.

[41] Information provided by a Member State; International Crisis Group Report, Counter-Terrorism in Somalia: Losing Hearts and Minds, 11 July 2005, available at: http://www.crisisgroup.org/home/index.cfm?id=3555&l=1.

[42] Assynt Associates, Rest of the World update, 2-22 July 2005.

[43] See "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel", Center for Immigration Studies, Sept. 2005, located at http://www.cis.org/articles/2005/kephart.html.

[44] Interpol provided this information to the Team.

countries, particularly less developed countries, face enormous difficulties in securing long, poorly defined and often mountainous borders and continue to request technical and economic assistance to do so.

90. Much of the data available to the Team on the travel of listed individuals is anecdotal, based on isolated reports, the occasional published study or publicly available Government orders (such as the recent Italian decision to expel Daki Mohammed to Morocco, his place of birth).[45] Given the importance of this issue to the global community, the Team continues to recommend that the Security Council or the Committee require States, where appropriate, to submit updated information when they locate listed persons within their territory so this data can be shared and perhaps added to the List (S/2005/572, para. 122; S/2005/83, paras. 49 and 124).

C. Interpol-United Nations Security Council special notices

91. Key to the successful implementation of the sanctions, as well as to combating terrorism generally, is locating the terrorists and their supporters on the List, whether by intelligence and law enforcement agencies trying to prevent attacks or resolve past ones, customs and immigration officials securing their country's borders or financial institutions implementing the assets freeze. In December 2005, the United Nations and Interpol introduced an important initiative in this regard by launching the Interpol-United Nations Security Council special notices.

92. The Interpol-United Nations Security Council special notices are, in essence, a type of "wanted" poster,[46] for use in identifying persons on the Consolidated List. The public version of the notices, available on the Interpol website,[47] provides for each individual, where available and authorized by the Member State, his/her name, photograph(s), gender, physical description, distinguishing marks and characteristics, date and place of birth, other names or aliases, nationality, languages spoken and information regarding identity documents, such as passport details. The notices list the applicable Security Council resolutions and the sanctions to be imposed and provide contact details for persons with information regarding the listed party at issue. The public version of the notice for the notorious terrorist Zarqawi, for example, is reproduced below in box 5.

[45] See http://www.interno.it/salastampa/comunicati/elenchi/comunicato.php?idcomunicato=924.

[46] Although the Team uses the term "wanted" poster to describe the appearance of the notices, it cautions that, because commission of a criminal offence is not necessary for inclusion on the List, many of the listed persons for whom notices will be issued will not actually be "wanted" for arrest, but merely "wanted" for application of the sanctions. The notices will include the additional information when someone is "wanted" for arrest, as in the Zarqawi notice.

[47] See http://www.interpol.int/Public/NoticesUN/Default.asp.

Box 5

Interpol-United Nations Security Council Special Notice

Subject To UN Sanctions

AL KHALAYLEH (ALIAS AL - ZARQAWI), Ahmad Fadil Nazal

2003/16476 AL KHALAYLEH (ALIAS AL - ZARQAWI) AHMAD FADIL NAZAL
2003/16476 AL KHALAYLEH (ALIAS AL - ZARQAWI) AHMAD FADIL NAZAL
2003/16476 AL KHALAYLEH (ALIAS AL - ZARQAWI) AHMAD FADIL NAZAL

Identity Particulars	
Present family name:	**AL KHALAYLEH (ALIAS AL - ZARQAWI)**
Forename:	**AHMAD FADIL NAZAL**
Sex:	MALE
Date of birth:	30 October 1966 (39 years old)
Place of birth:	AL ZARQAA, Jordan
Language spoken:	Arabic
Nationality:	Jordan
Other Names:	ABOU MUSAAB EL ZARQUAWI , ABU IBRAHIM , ABU MUSAB AL ZARQAWI , AL KHALAYLEH , AL MUHAGER , AL MUHAJER , AL ZARQAWI , ALKHALAYLEH , AZZARKAOUI , EL KHELAI ALLAH , EL KHELLAI ALLAH , EL ZARQUAWI , GARIB , MUHANNAD , ZARKAOUI
Other Forenames:	ABOU MOUSSAAB , ABOU MOUSSAB , ABOU MUSAAB , ABU MUSA'AB , AHMAD FADIL NAZAL , AHMED , AHMED FAD AL NAZZAR KHALAYLAH SAID , AHMED FAD AL NAZZAR KHALAYLAH SAID ABU MUSAB
Other Dates of Birth:	20 October 1966 , 30 October 1966

Identity Documents			
Type	**Nr**	**Issued on**	**Place of Issue**
PASSPORT	264958	4 April 1999	
IDENTITY CARD	1433035	4 April 1999	ALZARQA

Physical description	
Height:	1.80 meter <-> 71 inches
Colour of eyes:	BROWN
Colour of hair:	CHESTNUT

UN Sanctions
Pursuant to Security Council Resolution 1267 (1999) and successor resolutions including Resolution 1617 (2005) , the Subject is under the following UN Sanctions: Freezing of Assets, Travel Ban and Arms Embargo.

WANTED by Interpol

UN Sanctions	
YOUR NATIONAL OR LOCAL POLICE	
	ICPO-INTERPOL General Secretariat, (Command & Coordination Center, Tel: +33 472 44 76 76 / +33 472 44 79 80 - Email : ccc@interpol.int

©Interpol, 29 January 2006.

93. In addition, Interpol will maintain, within its I-24/7 global police communication system, a restricted version of each of the notices, including law enforcement-confidential information, such as fingerprints and details of relevant national investigations and operations under way. This information will be available round-the-clock on Interpol's restricted website to the National Central Bureaus of Interpol in each of its 184 member countries.[48]

94. The Committee and Interpol have only just begun the process of creating and issuing notices for each of the relevant United Nations-listed individuals. As more notices are published during the coming year, the chances of locating, identifying and, where appropriate, apprehending listed terrorists and their supporters should increase markedly because, rather than just appearing as a few lines on a lengthy List, designated individuals will become recognizable by their faces, descriptions and other identifying details.

[48] The partnership between the Committee and Interpol is already yielding results. After the first four Interpol-United Nations Security Council special notices were published in December 2005, law enforcement authorities recognized that the name on one notice, for Ahmed Tariq Anwar El Sayed, was similar to a name already contained within Interpol's database (only one letter of the name was different and the names were transposed). The country that had supplied the data to Interpol confirmed that the two names involved the same person and supplied Interpol with both a photograph and sketch, which are being added to the relevant special notice.

95. Establishment of the Interpol-United Nations Security Council special notices required extraordinarily close cooperation between the two organizations over the past year, as well as the agreement of the Interpol General Assembly and the 1267 (1999) Committee. The Team believes that, with such momentum behind the notices, the Security Council and the Committee should formally notify Member States of their existence and encourage them to distribute the notices widely throughout relevant national Government departments, as well as to non-governmental entities that might benefit from such information. Wide distribution of a special notice in an area where a featured individual was known to live or operate would be particularly valuable.

96. Along with informing States about the special notices and encouraging their distribution, the Team proposes that the Committee request that States submit to Interpol, where appropriate, any additional law enforcement and related information, such as photographs, fingerprints, physical descriptions and other identifying information, that they possess. States also should be encouraged to provide this information to Interpol when they propose a listing to the Committee. This will enable Interpol to include it on the Interpol-United Nations Security Council special notices as they are being issued and make them much more useful.

D. The International Civil Aviation Organization

97. In resolution 1617 (2005), the Security Council welcomed the work of ICAO to prevent travel documents from being made available to terrorists, and the Team met ICAO officials in November 2005 to discuss ICAO standards, practices and guidance to States to see how they might further reinforce the sanctions regime. There appear to be several areas of convergence between the work of ICAO and the 1267 (1999) Committee, and the Team plans in due course to make recommendations on specific areas for cooperation.

98. The Team has referred to ICAO travel document security standards in its previous reports (see S/2005/83, para. 130) as well as to its work on new standards for biometric systems in passports (S/2005/572, para. 126). The Team regards this work as of great importance in undermining the widespread use of and flourishing trade in stolen and forged passports. Although ICAO standards are not enforced through sanctions, there is some incentive for States to comply as other States may choose to impose rigorous visa requirements on the nationals of any State that does not comply as a way of introducing additional means of protection.

99. While all 189 ICAO contracting States have agreed to issue machine-readable passports by 2010, the long renewal cycle of travel documents could delay the full impact of the measure for some years. Therefore, these States also have agreed that, in the case of passports issued after 24 November 2005 that are not machine-readable, they shall ensure that the expiration date falls before 24 November 2015. This should significantly improve the enforcement of the travel ban.

100. In discussion with ICAO, the Team discovered that its standards and recommended practices, including those on inadmissible persons,[49] do not specifically provide for dealing with listed individuals, and there may be a need to

[49] Contained in the Convention on International Civil Aviation, annex 9. See United Nations, *Treaty Series*, vol. 15, No. 102.

elaborate a wider set of procedures for dealing with individuals caught attempting to evade the travel ban. As well as considering recommendations for the Committee on this point, the Team intends to study further how the provisions of the sanctions regime might be included in pertinent ICAO guidelines and related documents.

101. Meanwhile, in order to improve the understanding and engagement of aviation security officials in implementing the sanctions, ICAO has offered to place the Consolidated List and other sanctions-related information on its aviation security website and to see what changes could be made to its training materials and programmes to improve awareness and implementation. The Team recommends that the Committee respond positively to this offer.

VII. The arms embargo

A. Overview

102. The great majority of States that have been targeted by Al-Qaida implement the arms embargo efficiently and listed terrorists must resort to improvised methods to mount attacks. Other States struggle with implementation and face the threat of terrorist attack across a wide front. A small number are unable to implement the measures at all and terrorists are able to breach the arms embargo at will.

Box 6

Breaches of the arms embargo in Iraq, Afghanistan and Somalia

The lack of central authority in Somalia allows Al-Qaida associates there to evade the arms embargo at will. The Monitoring Group on Somalia, re-established pursuant to resolution 1587 (2005), reported that arms continue to be trafficked for the benefit of the listed Al-Itihaad Al-Islamiya and its leaders (S/2005/625). The situation appears to be getting worse, and continued arms embargo violations present a growing threat to international security, both in the region and beyond. While matters pertaining to Somalia are primarily handled by the Committee established pursuant to resolution 751 (1992), developments related to Al-Itihaad Al-Islamiya are also of considerable interest to the 1267 (1999) Committee, and the two Committees may see advantage in looking together at ways to address them. The Team also intends to work closely with the Somalia Monitoring Group and with neighbouring States when investigating this issue.

With regard to implementation in Iraq and Afghanistan, both States lack the capacity to enforce the embargo and listed individuals and groups are able to circumvent it with little difficulty. Al-Qaida in Iraq and its associates are constantly attacking Government and Coalition forces as well as carrying out terrorist atrocities against civilians. A large amount of weaponry from former army stockpiles is available, and Al-Qaida in Iraq is able to train its cadres in its use. It has also made Iraq a launching pad for attacks in other countries, notably Jordan, where Al-Qaida-related terrorists carried out an attack against a United States Navy ship in Aqaba in August 2005, using artillery rockets

smuggled from Iraq, and against three hotels in Amman in November 2005, using explosive vests. Recruits and possibly training have also been supplied from outside Iraq, and neighbouring States must fulfil their obligation to prevent breaches of the arms embargo "from their territories or by their nationals outside their territories" (resolution 1617 (2005), para. 1 (c)).

The frequent attacks by the Taliban and Al-Qaida-related terrorists in Afghanistan show that arms embargo violations persist despite the Government's disarmament programme. Suicide bombings have also become a trend. It is hard to imagine any effective implementation of the arms embargo while central authority remains so weak and so many arms are drawn into the country to protect the drug trade.

B. Conventional arms

1. Explosives and terrorist bombings

103. Clearly, terrorists will use the most reliable and effective arms that they can obtain. Given the opportunity, they will use military-grade explosives and related materiel over commercially produced alternatives. In Iraq and Afghanistan, Al-Qaida, the Taliban and associated groups will continue to use military-grade materiel to construct improvised explosive devices for so long as supplies last and their acquisition is possible. Elsewhere groups have been forced by effective controls and the need to evade detection to adapt and improvise devices from more easily obtained products. It is essential that States ensure that their control regimes, for both military and commercial explosives, are as robust as possible.

104. The regulation of commonly available materials from which a trained terrorist might construct an explosive device is a more difficult task. Nevertheless, since in several cases previously undetected Al-Qaida cells have used such explosives to devastating effect, several States have adopted methods to limit access to critical precursors. The Team continues to examine these initiatives and to consult State officials so as to develop practical recommendations for the Committee's consideration.

Box 7

Some recent bombings: improvised and military-grade explosives

The four bombs that exploded in London on 7 July 2005 each contained home-made high explosives known as triacetone triperoxide (TATP), as did those that failed to go off two weeks later. This cheap and easy-to-make explosive can be synthesized at home from commercially available components (by mixing hydrogen peroxide and acetone with an acid used as a catalyst). But while the method is relatively simple, the resulting explosives are, unlike military explosives, unstable and unreliable.

This use of home-made explosives demonstrates the adaptability of Al-Qaida-related terrorists in countries that implement the arms embargo effectively. The London suicide bombers did not even need to procure and install efficient detonators, as was the case with the more technical, delayed explosions in Madrid in March 2004.

In Indonesia, Jemaah Islamiyah appears to have moved away from large, vehicle-borne improvised explosive devices, composed of commercial or improvised explosives (potassium chlorate, sulphur and aluminium powder combined with a primer such as TNT) as used in the first Bali bombing in October 2002, towards a more targeted approach where individuals carry smaller bombs into the target area, as seen in the second Bali attacks in October 2005. The change of tactics appears to be based on the improved capacity of Indonesian officials to detect and stop suspicious vehicles approaching target locations, combined with a desire to reduce collateral damage, including casualties among the local population. This adjustment may demonstrate that members of Jemaah Islamiyah have increased their technical expertise in preparing attacks. In fact, Azahari Husin provided explosives training to such operatives by adapting "kitchen recipes" found on the Internet before he was killed in November 2005.[50]

In Amman, on 9 November 2005, suicide bombers attacked three hotels, killing 60 people and injuring at least 115. A fourth attacker failed to detonate her bomb and was arrested a few days later. The attacks were carried out using military grade explosives packed into sophisticated explosive vests. The devices contained two blocs of PE4A, a RDX-type explosive, connected to an electric detonator and a back-up, mechanical detonator, using parts from a type F1 hand grenade fuse assembly. According to Jordanian official sources, the explosive vests were made by Al-Qaida in Iraq, using explosives and grenades taken from former Iraqi Army stockpiles and smuggled into Jordan.

2. Small arms and light weapons

105. In addition to improvised explosive devices, Al-Qaida, the Taliban and their associates have continued to acquire and use small arms and light weapons in areas where there is little capacity to implement the arms embargo. Within this category, terrorists have managed to obtain man-portable air defence systems, anti-tank guided missiles and artillery rockets. These weapons are sought because they are compact and offer terrorists the ability to attack safely from afar and cause meaningful damage. In some cases, lack of technical expertise has limited the accuracy of the weapons used and therefore the damage caused by such attacks, but as long as terrorists can establish training camps in areas of weak central control and gain combat experience in Afghanistan and Iraq, the quality and the quantity of expertise available to them are likely to increase.

[50] Australian official sources.

106. The Team has already reported at length on the threat from man-portable air defence systems (S/2005/83, paras. 104-111, and S/2005/572, paras. 101 and 113 and annex VI). Although terrorists have not used such systems recently to attack civil aviation or other targets outside conflict zones, the stock available remains uncontrolled and the possibility of their use is real. For example, in the latter half of 2005 the Ministry of Interior of Tajikistan discovered over 50 missiles for man-portable air defence systems in caches believed to belong to the Islamic Movement of Uzbekistan, a listed entity. The international community has continued to work on initiatives to raise awareness of this threat and to find ways to reduce it. The Australian Government, which currently chairs the Wassenaar Arrangement, has introduced a threat reduction initiative on the use of these systems to the Association of Southeast Asian Nations (ASEAN) Regional Forum. This approach follows the commitment made by Asia-Pacific Economic Cooperation (APEC) Ministers in November 2005 to conduct, before the end of 2006, an assessment of airport vulnerability to attack by man-portable air defence systems. At this stage, it seems that while the threat can be moderated, there are no foolproof measures to prevent an attack against a civilian aircraft by either protecting planes or by reinforcing the security of airports.

107. The Team will continue to discuss man-portable air defence systems with ICAO and other relevant bodies, some of which have already devised control systems, including: export criteria and licence types; controls on retransfer and end-user certificates; restrictions on non-governmental end-users; restrictions on destinations; and delivery verification. Although these measures belong to wider regimes beyond the scope of the arms embargo, its effective implementation depends on the existence of such regulation.

C. Chemical, biological, radiological and nuclear terrorism

108. In its previous reports the Team concluded that the most likely chemical, biological, radiological or nuclear-related device that Al-Qaida, the Taliban or their associates might use was a radiological dispersal device or "dirty bomb". Although no actual case has emerged since the Team's last report, there is continued concern that listed groups and individuals retain their ambition to mount such an attack, coupled with a number of reports that an illicit supply of radiological materials still exists, including in areas where Al-Qaida and the Taliban are active.[51]

109. Following its last report, the Committee asked the Team (S/2005/760, sect. IV) to make specific recommendations with regard to the threat of a chemical, biological, radiological or nuclear attack by Al-Qaida and the Taliban, and the Team has continued to discuss this with the experts appointed to assist the 1540 (2004) Committee, relevant international bodies and the scientific community. At this point, the Team merely recommends that the Committee, for example in its guidelines or other documents, provide a more detailed clarification of the scope and application of the arms embargo, including as regards chemical, biological, radiological or nuclear-related materiel and technical expertise. Secondly, the Team recommends that the Committee approach, whether directly or through the Team, intergovernmental organizations such as IAEA and the Organisation for the Prohibition of Chemical Weapons (OPCW), which deal with related issues, to

[51] IAEA Illicit Trafficking Database Office; information from a Member State.

ensure that their work effectively takes into account the requirements of the arms embargo. The Team will continue to elaborate a set of recommendations covering this threat.

D. Technical advice, assistance and training

110. Training is an essential precursor to any successful attack, and it is important to remember that the arms embargo specifically includes training (resolution 1617 (2005), para. 1 (c)). Local cells of Al-Qaida-related terrorists have managed to improvise ad hoc training, or to download instructions from the Internet, but there is no substitute for proper training camps, both in terms of imparting military, paramilitary and terrorist skills and as an opportunity for radical indoctrination. The effective and reliable use of modern weapons requires extensive practical training in field conditions, and while basic operation may be simple enough to learn, even online, unforeseen and sudden operational complications may cause insufficiently trained operatives to bungle their attacks. It is important therefore that States do not lose sight of this element of the embargo. The Committee may wish to remind them of it as opportunity arises, encouraging them to submit for listing the names of those providing "technical advice, assistance, or training related to military activities" (resolution 1617 (2005), para. 1 (c)) in violation of the measures.

Box 8

Training for Jemaah Islamiyah in South-East Asia

In South-East Asia, the island of Mindanao in the southern Philippines is a significant training area for Jemaah Islamiyah and the Abu Sayyaf Group. Protected by former members of the Moro Islamic Liberation Front who reject the peace process between the Front and Manila, operatives of Jemaah Islamiyah have found a safe haven where they can train both their own members and those of the Abu Sayyaf Group. According to Australian official sources, training includes bomb-making and suicide bombing techniques. Information on the links between the Abu Sayyaf Group and Jemaah Islamiyah, as well as on their common training, was obtained from an instructor named Rothmat, who had acted as liaison between the groups in the province of Maguindanao between 2000 and the time of his arrest in March 2005.

Azahari Husin, the best known bomb-maker in Jemaah Islamiyah until his death in November 2005, trained, in addition to an unknown number of ordinary students, several other instructors who are still at large and are able to pass on their knowledge to cells throughout South-East Asia.

E. Improving implementation of the arms embargo

111. In order for States to be able to implement the arms embargo effectively against Al-Qaida, the Taliban and their associates, there must be a wider arms

control regime based on properly enforced legal, administrative, regulatory or other measures. Consequently, while the Team's work focuses on the individuals and entities on the Consolidated List, it has occasionally been necessary to highlight parts of the broader architecture that do not provide an adequate basis for the specific measures of the Al-Qaida, Taliban sanctions regime. States should not, however, rely on improvements to broader arms control measures to allow full implementation of the arms embargo. Its specific nature demands specific regulation, in particular with regard to attacks using improvised and unconventional methods. The Committee may wish to remind States of this fact.

112. The issue of stockpile security has a wider scope than the arms embargo, but it should also be considered in this context. The Team has been briefed by several States on their efforts to improve stockpile security. A useful first step taken by States has been to define those stockpiles of ammunition and explosives that are necessary for legitimate purposes of self-defence and to destroy the rest. International and regional organizations offer significant assistance for the improvement of stockpile security, and the Committee may wish to point out to States the importance of this work in reducing the risk of illicit arms trafficking, in particular with regard to high explosives, man-portable air defence systems, anti-tank guided missiles and artillery rockets.

113. Even in States with little central authority, it is unlikely that arms, materiel or technical assistance would be openly provided to individuals or entities on the Consolidated List. In States where the embargo is enforced more robustly, listed entities are even more likely to employ unlisted operatives as intermediaries for this purpose. The exchange of information between States on such individuals must be a high priority, but even more important is their inclusion on the Consolidated List.

VIII. Member State reporting

A. Non-reporting States

114. One of the Team's primary sources of information is the reports submitted by Member States under Security Council resolution 1455 (2003). Thirteen additional States reported in 2005, six[52] since the Team last reported in June. There are now 45 States that have not reported, 31 of which have also not reported to the 1540 (2004) Committee, and are behind in reporting to the Counter-Terrorism Committee. Of these, 24 are in Africa, 10 in Asia, 10 in Latin America and the Caribbean and one in Eastern Europe. These reports are essential for an initial assessment of overall implementation of the sanctions measures and an analysis of assistance needs according to a State's vulnerability to Al-Qaida-related terrorism. The Team continues to recommend that the Committee urge non-reporting States to fulfil their obligation.

B. Promoting reporting

115. In its report, dated 29 December 2005, the Working Group on Sanctions noted the increasing fatigue among Member States with regard to their reporting

[52] Bhutan, Cameroon, Mali, Niger, Sierra Leone and the United Republic of Tanzania.

obligations to the various Security Council Committees and visits from different monitoring mechanisms (S/2005/842, para. 18), and the Team believes this is an important issue to address. The Team has held several meetings with the Counter-Terrorism Committee Executive Directorate (CTED) and the experts who support the 1540 (2004) Committee to consider how best to collect information from States, and has also discussed this matter with Member States.

116. For States which have provided little or no information, it is clearly important to judge whether this flows from a lack of capacity, a lack of interest or energy or a lack of will. The Team has had many contacts with non-reporting States and has not yet encountered one that appears determined not to report to the 1267 (1999) Committee nor one that has not tried, to some extent, to implement the sanctions. The consensus against Al-Qaida-related terrorism remains solid, but many States have severe problems of capacity or national coordination, which make compilation of a report extremely difficult. Other States may have capacity, but do not understand the purpose of reporting, nor what benefit may accrue nationally from doing so, while others continue to see the problem as remote and undervalue their likely contribution; some States may be embarrassed to reveal the extent of their problems with implementation.

117. The Team sees a need to address these impediments to reporting and improve the value of reports submitted. First, the Team believes that the Committee (and the Team) should continue to take every opportunity to explain the importance of receiving information from all States, not just those with the most obvious contribution. It recommends that the Committee consider putting on its website a paper explaining in simple terms the principal objectives of its work and the value of the reports of Member States in order to encourage greater understanding and participation. Second, it recommends that the Committee, in conjunction with the Counter-Terrorism Committee and the 1540 (2004) Committee, engage with particular regional groups, such as the Pacific Islands Forum[53] and the Caribbean Community and Common Market,[54] to raise regional awareness and examine possible regional approaches to the problem. These could include the appointment of a regional partner or another State with close relations with the region to act as a mentor in the preparation of reports, or a request to the Secretary-General to give this job to one of his officials. Without undermining the individual obligation of States to provide a report, the Committee might also consider what elements of a report a State could submit in common with neighbouring States, for example, as might concern the regional threat from Al-Qaida. This also would serve to promote regional counter-terrorism cooperation.

118. The Team understands that the Committee has no immediate intention to ask States for further reports, apart from the checklist required by resolution 1617 (2005), but nonetheless it also recommends that the Committee ask the Counter-Terrorism Committee and the 1540 (2004) Committee to notify it before they request a State to submit any additional reports in case there are also questions that the Committee would like answered.

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[53] Eight members of the Pacific Islands Forum have not submitted their resolution 1455 (2003) report, seven of which are common non- or late reporters to all three Committees.

[54] Eight members of the Caribbean Community and Common Market have not submitted their resolution 1455 (2003) report, six of which are common non- or late reporters to all three Committees.

C. The Checklist

119. In paragraph 10 of its resolution 1617 (2005), the Security Council called on Member States to use a checklist to report, by 1 March 2006, on specific actions they have taken to implement the sanctions measures with regard to the individuals and entities "henceforth" added to the Consolidated List. The first period for which the checklist is required has been determined by the Committee as being the six months between the adoption of the resolution on 29 July 2005 and 31 January 2006. The Team notes that the Chairman of the Committee has written to Member States to remind them of the need to submit the checklist and has also provided a convenient format for submitting this information with regard to the 24 names added to the List within the reporting period.

IX. Al-Qaida and the Internet

A. Al-Qaida use of the Internet

120. In its previous reports (S/2005/83, paras. 149 and 150; S/2005/572, paras. 145-152) the Team noted the increasing use of the Internet by Al-Qaida, the Taliban and their associates. Since then the Security Council has expressed its concern over such use, in the preamble to resolution 1617 (2005) and in resolution 1624 (2005), in which it recognized the importance of States acting cooperatively to prevent terrorists from exploiting sophisticated technology to incite support for criminal acts.

121. Current estimates suggest that over 800 million people worldwide have access to the Internet.[55] This number is bound to grow, particularly in the Middle East[56] and other areas that Al-Qaida targets. The Internet offers Al-Qaida and its associates instant communication with little or no regulation or traceability; it allows the Al-Qaida message to reach all parts of the globe, regardless of its existing influence; provides Al-Qaida operatives with anonymity; offers the opportunity for Al-Qaida to abuse sophisticated, multi-media messaging to glorify terrorist acts; enables Al-Qaida to influence traditional mass media through its websites; serves as a medium for the conduct of misleading theological debate; helps link local terrorist cells into a global Al-Qaida campaign; allows small but effective Al-Qaida groups to gain wide influence; and helps isolate potential recruits from the counter-balancing influences of family and friends.

122. Some indication of the increasing use of the Internet by Al-Qaida and its associates can be seen in the growth of terrorist websites, from 12 in 1998 to over 2,600 today.[57] Sites range from those set up to promote particular individuals, such as Shamil Basayev in Chechnya, or groups, such as Lashkar-E-Tayyiba in Pakistan, to those that aim to justify Al-Qaida-related terrorism in general, such as Voice of Jihad, or offer terrorist training, such as Al-Battar. As well as training, the hi-tech crime subgroup of the Group of Eight has summarized the aims of terrorist use of

[55] Organization for Security and Cooperation in Europe (OSCE) workshop, "Combating the Use of the Internet for Terrorist Purposes", Vienna, October 2005.

[56] Current Internet penetration in the Middle East is 16 million (8.6 per cent), http://www.internetworldstats.com.

[57] OSCE workshop.

the Internet as to: instil terror; proselytize; incite; recruit; raise funds, including through Internet-based crime; move funds and material resources, whether through online banking, or through Internet-based financial services such as e-cash; communicate securely; and plan attacks. It is no surprise therefore, that many Member States see the Internet as a key issue in combating the spread of Al-Qaida-related terrorism and the threat that it represents.

B. Possible measures to combat Al-Qaida use of the Internet

123. While counter-terrorism experts and intelligence and security officials in touch with the Team agree that something must be done to combat Al-Qaida's use of the Internet, there is as yet no agreement on what that should be. The only international legal instrument that explicitly addresses the content of the Internet is the Council of Europe's Convention on Cybercrime, to which several non-European countries have added their signature, and its Additional Protocol which criminalizes incitement.[58] Other international legal instruments, including the Council of Europe's Convention on the Prevention of Terrorism,[59] have begun to consider related issues such as terrorism incitement, recruitment and training. While this route may be a long one, the conclusion of an international legal instrument should be an objective to aim for.

124. But the situation would also seem to demand more immediate action, and various suggestions have been made to the Team for possible consideration by the Committee and the Security Council. One is to extend the sanctions regime to cover terrorist use of the Internet, in particular to prevent listed individuals and entities from hosting websites that promote terrorism.[60] Many security officials believe that this would have a significant effect and would deny listed terrorists an easy way to blunt the impact of the measures imposed upon them. An attack on Al-Qaida's communications, in addition to its finances, travel and arms, would certainly add a major new element to the sanctions regime. Others have focused on Internet sites that offer instruction in the manufacture and use of explosives, and even of weapons of mass casualty. If such sites cannot be controlled, the officials would seek some mechanism that might at least maintain and circulate a register of such sites, based on Member State contributions, which would alert others to their existence and encourage them to monitor, filter or close them.

125. Perhaps a useful example of how this problem could be addressed is the creation of a register of entities (or use of an existing registry of entities) that create websites promoting terrorism in any form. An analogous approach has been relatively successful within the industry via self-regulation through a Register of Known Spam Operations database, which collates information on such operations previously terminated by internet service providers.[61]

126. Other suggestions have been for the Security Council to urge all States to introduce "know your customer" rules for hosting companies and internet service

[58] Council of Europe, Convention on Cybercrime, Budapest, November 2001, and its Additional Protocol, Strasbourg, January 2003.

[59] Council of Europe, Convention on the Prevention of Terrorism, Warsaw, May 2005. In fact, the explanatory notes to this Convention describe its applicability as including the Internet.

[60] For example, Hani Al-Sayyid Al-Sebai (http://www.almaqreze.com) and Jama'at Al-Tawhid Wa'Al-Jihad (http://www.tawhed.ws) are listed parties that operate websites.

[61] See http://www.spamhaus.org/rokso/index.lasso.

providers. They argue that this would again limit terrorist use of the Internet and even help track Al-Qaida operatives that do so. Some proposals go further, and would have the Council urge Member States to oblige hosting companies and Internet service providers under their jurisdiction to provide relevant information to the national authorities charged with combating terrorism. Officials have also suggested that the Committee or Team convene a meeting of industry and counter-terrorism experts from interested Governments to seek practical solutions to the technical difficulties of tracking and curbing Al-Qaida use of the Internet.

127. The Team has undertaken to prepare a detailed paper on these matters for the Committee's consideration. But it recommends that the Committee and the Security Council could begin immediately to look at preventing listed individuals and entities from hosting websites that promote terrorism by calling on States, to the extent feasible, to introduce regulations that forbid this within their jurisdiction.

X. Monitoring Team activity

A. Visits

128. Since July 2005, the Team has visited 10 States and has held discussions with many international and regional bodies. A Team member also accompanied the Committee Chairman on his visits to four countries (Chad, Nigeria, Japan and Indonesia) and to two meetings of the Organization for Security and Cooperation in Europe (OSCE) in Vienna.

1. Mozambique, Swaziland and Lesotho

129. The Team's visit through Southern Africa confirmed the difficulty faced by smaller and less-developed countries in implementing the sanctions. The three countries noted their efforts to strengthen various anti-terrorism laws to bring them into line with United Nations resolutions, but a lack of capacity hinders effective implementation. The Consolidated List is used only sporadically in the financial system and control of cross-border currency movement is hindered by porous borders as well as a lack of immigration personnel. False documents are widely available and the lack of computers and other equipment to check travellers against lengthy watch lists, including the Consolidated List, presents a serious problem. Officials also noted that small arms and light weapons, left over from earlier conflicts in the region, continue to be available.

2. Kyrgyzstan, Tajikistan and Uzbekistan

130. The trip highlighted the problems faced by countries in the process of establishing legal and institutional frameworks to counter terrorism in an unsettled political, social and economic climate. While the threat of terrorism has been more of a nagging ache than a throbbing pain since the disruption of the Islamic Movement of Uzbekistan (IMU) by coalition action in Afghanistan in 2001, it still exists, and the potential for rapid regrowth by the IMU and its successor groups, such as the Islamic Jihad Group and the Islamic Movement of Turkistan, also referred to as the Islamic Party of Turkistan, is real. All three States face the almost impossible problem of controlling long and mountainous borders. The three countries are aware of the sanctions regime and are taking steps to improve

implementation, but they have yet to realize fully how the regime might help their national and regional response to the threat. The Team encouraged them to submit names to the Committee for listing and looks forward to further cooperation.

3. Uganda, Kenya and Ethiopia

131. The Team met officials in these three countries responsible for national security, financial regulation, supervision of non-governmental organizations and border control and noted a good level of awareness of the sanctions regime. All three States saw the situation in Somalia as a principal contributor to the terrorist threat to the region. They believed Somalia provided Al-Qaida-related terrorists with an ideal location for recruitment, training, concealment and recuperation. In addition, they had observed foreigners, including from Afghanistan, entering Somalia to train with Al-Itihaad Al-Islamiya, which they saw as a powerful and expanding group. They argued for a better coordinated international response.

4. Australia

132. Australia is clearly making every effort to ensure full compliance with the sanctions regime and to address regional weaknesses in implementation. The smaller Pacific States lack resources, in particular to maintain border security, and Australia and New Zealand have done much to focus the attention of international donors on this area, finding a useful partner in the secretariat of the Pacific Island Forum. As in many other areas, the widespread availability and use of false documents presents a particular problem. Australia is concerned that its neighbours in South-East Asia continue to be under threat from Jemaah Islamiyah, an adaptable terrorist organization that has responded to public disapproval and increased security measures by changing the form of its attacks to reduce collateral damage to the Muslim community. The Philippines, Indonesia and Thailand are seen as the South-East Asian countries most at risk from terrorists.

B. International and regional organizations

133. En route to Australia, the Team visited the South-East Asian Regional Centre for Counter-Terrorism in Malaysia and met the Secretary-General of the Association of Southeast Asian Nations in Indonesia. Regional organizations in several other areas also have active counter-terrorism programmes. These organizations recognize that while States have the direct responsibility to implement the Al-Qaida, Taliban sanctions regime, there are many issues which are common to a range of States. The Team believes that a regional approach to implementation of the measures can significantly improve their effectiveness, particularly where regional organizations have established operational mechanisms, binding standards or recommended best practices.

134. The Team has discussed areas for cooperation with the OSCE Action against Terrorism Unit, the Commonwealth of Independent States Regional Office for Central Asia and the Shanghai Cooperation Organization's Regional Anti-Terrorist Structure and has initiated contact with other regional organizations, such as the

Organization of American States,[62] which has established the Inter-American Committee on Terrorism, and the African Union,[63] which has established a counter-terrorism centre in Algiers. In addition, the Team is in touch with a range of international bodies such as IAEA and ICAO, and has developed a particularly productive relationship with Interpol.

C. Conferences and meetings

135. The Team attended various international meetings such as the General Assembly of Interpol in Berlin; the second East African Regional Counter-Terrorism Conference in Khartoum; the Group of Eight Counter-Terrorism Action Group meeting in London; the OSCE Workshop on the Use of the Internet for Terrorist Purposes in Vienna; the OSCE/United States Workshop on Combating the Financing of Terrorism, also in Vienna; and the Euro-Atlantic Partnership Council/Partnership for Peace workshop, "Public/Private Cooperation in Combating the Financing of Terrorism" in Zurich. These proved useful in promoting the work of the Committee, raising awareness and understanding of the sanctions regime, developing ideas to improve the effectiveness of the measures and discussing the difficulties that some States face with implementation and what might be done to help them.

D. Meetings with security and intelligence services

136. An effective way to gather information about the practical effect of the sanctions measures and the gaps through which terrorists continue to slip is through discussion with professionals who deal with these issues in their national capacity on a daily basis. Since its last report the Team has held its third regional meeting for the heads and deputy heads of security and intelligence services. Representatives attended from Algeria, Egypt, Jordan, the Libyan Arab Jamahiriya, Morocco, Pakistan, Saudi Arabia and Yemen. The concerns of this group included the challenge posed by the Al-Qaida appeal, terrorist use of the Internet, the glorification of terrorism through the media, the indefinite nature of sanctions, the need to support rehabilitation programmes and the sharing of technical and operational intelligence.

137. The value of this group has encouraged the Team to consider the formation of other, parallel and overlapping groups that could look in particular at Al-Qaida-related issues in Somalia, the Sahel and sub-Saharan Africa and South-East Asia, three areas of growing concern. At the same time, the Team invites contact with all interested intelligence and security services, and it held a useful meeting with the Dutch Security and Intelligence Service, as well as with the security services of States visited during the period, notably in Kenya, Ethiopia, Uzbekistan, Kyrgyzstan and Tajikistan. In addition, it attended a Conference for East African Security Services, held in Khartoum in September 2005, which attracted the participation of 20 States. Many of the comments and proposals made during its meetings are incorporated in the present report, but the engagement with the Team by these

[62] Ten Latin American/Caribbean members of the Organization of American States have not submitted their resolution 1455 (2003) report.

[63] Twenty-four members of the African Union have not submitted their resolution 1455 (2003) report.

security professionals shows that they regard the sanctions regime as an important weapon in combating Al-Qaida-related terrorism and as being relevant to their own national efforts to deal with the threat.

E. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to Security Council resolution 1540 (2004)

138. The Team has had almost daily contact with both the Counter-Terrorism Committee Executive Directorate (CTED) and the experts supporting the 1540 (2004) Committee. Although the mandates of the three Committees are distinct, there are three main areas of convergence where regular dialogue can identify savings in effort both for the expert teams and for Member States. The three areas all concern collecting information from States and can be broken down into: travel; reporting by States; and charting assistance needs. The Team routinely coordinates its travel plans with CTED, and has carried briefs for both CTED and the experts supporting the 1540 (2004) Committee on its visits to Member States and international organizations. The Team looks forward to its first joint visit to a Member State with CTED in February 2006, and expects this to become an increasingly common occurrence.

139. The Team has also initiated discussion with the other expert groups on possible new approaches to the reporting requirements placed on States by the three Committees, and on ways to establish more efficient systems of information sharing. In the latter context, the Team and the Secretariat have finalized the construction of a database to facilitate the efficient storage, retrieval, management and analysis of all the data which the Team has gathered. The Team has demonstrated the system to CTED and to the 1540 (2004) Committee experts and hopes that they too will find it useful.

140. In some of its visits, particularly to less-developed States, the Team has found the relevant national agencies involved in counter-terrorism to be severely underfunded, particularly in the area of border security, to the point where relatively senior officials lack access to computers and other relevant technology and others have little or no staff to perform critical tasks. The Team has passed on these details to CTED and has worked closely with it and the 1540 (2004) Committee experts on charting the assistance needs of these States.

141. CTED has compiled two matrixes based on information provided by Member States and the international donor community, one for assistance requests and one for assistance offers. The 1540 (2004) Committee experts have produced a matrix containing assistance offers, points of contact and assistance requests. The Team has also brought together information on assistance needs and offers from its contacts with States and their resolution 1455 (2003) reports, and has forwarded them to CTED. At present the three expert groups have no mandate to proceed beyond this point. The experts are keenly aware of the need to avoid duplication between themselves and with other United Nations bodies such as the Office of Legal Affairs (which provides assistance for legislative drafting under the counter-terrorism conventions) or the United Nations Office on Drugs and Crime (which has technical assistance programmes) or donor groups such as the Counter-Terrorism Action Group. Coordination is improving, but there is still a need for a better mechanism to identify complementarities and avoid duplication.

Annex

Litigation by or relating to individuals on the Consolidated List

1. As described in the main part of the present report (see sect. IV.C above), in September 2005, the Court of First Instance of the European Communities handed down major decisions in support of the Al-Qaida, Taliban sanctions programme, perhaps the most significant legal developments to date with respect to the various challenges filed by individuals and entities to their listing. The decisions of the European Court involved two of the known legal challenges (15 so far)[a] filed on behalf of persons and entities listed by the Committee.

2. Since the Team's last report, to the Team's knowledge, no new relevant challenges have been brought, although other cases have been raised, which while not challenging the sanctions per se, involve listed parties. No court has yet ruled against the sanctions programme and many of the previous challenges have been dismissed. The following represents an update on the status of relevant legal proceedings.[b]

A. Belgium

3. The Team noted in its third report that, as a result of a judicial proceeding, a Brussels court ordered the Government of Belgium to make a de-listing request to the United Nations for Nabil Sayadi and his wife, Patricia Vinck, officers of a listed entity, Fondation Secours Mondial, the European branch of Global Relief Foundation, also a listed entity (S/2005/572, annex II). Although the Government thereafter complied and initiated the de-listing request, the Committee has not publicly acknowledged any action on it. Subsequently, in December 2005, the judicial criminal investigation of Mr. Sayadi and Ms. Vinck was closed via a decision to dismiss the case by the Judges' Council Chamber of the Brussels Court of First Instance. That decision is final.

B. European Union

4. On 21 September 2005, the Court of First Instance of the European Communities handed down decisions in two cases challenging the Al-Qaida, Taliban sanctions imposed by the Security Council and the Committee. Yassin Kadi of Saudi Arabia filed one case; the other involved Ahmed Ali Yusuf and Al Barakaat International Foundation, both of Sweden. The applicants alleged that the United Nations assets freeze, which is automatically implemented in the European Union via a regulation promulgated by the European Commission, violated certain

[a] There have been five direct challenges to listings made pursuant to the Al-Qaida, Taliban sanctions both before the Court of First Instance of the European Communities and in the United States of America. Two lawsuits have been filed in Turkey, and one per country in Belgium, Italy and Pakistan. The other legal cases described in the Team's reports involved related proceedings involving listed persons, such as decisions regarding criminal investigations (S/2005/572, annex II; S/2005/83, annex II).

[b] Information provided by the Governments of Member States and by regional organizations.

fundamental rights, including the right to property, the principle of proportionality, the right to be heard and the right to effective judicial review.

5. The Court denied all the applicants' claims and upheld the sanctions, as well as the primacy of the Security Council when acting under Chapter VII of the Charter of the United Nations, but also ruled, apparently for the first time, that courts could review Security Council decisions to ensure that they comply with internationally recognized fundamental norms of human rights from which neither Member States nor the United Nations may derogate.

6. As for the specific claims, the Court ruled that the freezing of assets did not violate fundamental rights protected by jus cogens because the sanctions allowed for possible derogations, at the request of interested parties, to cover basic expenses. It also held that, given the importance of the fight against international terrorism, the precautionary and temporary freezing of funds, allowing exceptions for basic expenses, did not constitute an arbitrary, inappropriate or disproportionate interference with the right to property. As for the right of defence, the court held that jus cogens did not require a personal hearing of the sanctioned parties before the Security Council and noted that the applicants could submit through their national authorities a de-listing request to the Committee. The Court found that the applicants had not been denied the right to effective judicial review, as the court had conducted a complete review of their claims (although the court noted that issues involving Security Council decision-making were beyond its authority to review).[c]

7. Both parties appealed the Court's decision on various issues to the Court of Justice, but no hearing date has been scheduled yet. The other three cases before the Court of First Instance involving listed parties remain pending.

C. Netherlands

8. On 5 January 2006, a Dutch appeals court upheld the district court's rejection of an application by the Public Prosecution Service to ban and dissolve the Netherlands branch of the Al-Haramain Foundation, known as Stichting Al-Haramain Humanitarian Aid. The Committee listed the Netherlands branch of Al-Haramain and its chairman, Aqeel Al-Aqil, on 6 July 2004, and Dutch prosecutors thereafter sought to ban and dissolve the organization and release any credit balance of the organization's bank account to the State (see S/2005/572, annex II).

9. The district court originally ruled that the Government had not proven that the Netherlands branch of Al-Haramain, separate and apart from the international organization, had supported terrorism. The appeals court upheld this ruling, despite draft legislation in the Netherlands to ban United Nations-listed organizations, as the draft legislation has not yet been approved by Parliament. The appeals court further held that dissolving the organization required expropriating its assets, which goes further than the freezing required by the sanctions regime. The Government has not yet decided whether to appeal this latest ruling.

[c] An interesting aspect of the decision was the European Court's suggestion that a resident of a State unwilling to submit his case before the United Nations could bring a national judicial proceeding to compel the State to act. This finding is similar to a ruling by a Brussels court last year that required the Government of Belgium to submit de-listing petitions to the Committee for two persons on the List (S/2005/572, annex II).

D. Pakistan

10. As the Team noted in its third report (S/2005/572, annex II), listed entity Al-Rashid Trust filed a petition against the freezing of its assets with a court in Pakistan. According to the Government, the case is pending before the Supreme Court, and the trust's assets remain frozen during these proceedings.

E. Turkey

11. The two legal challenges filed in Turkey by listed persons, as described in the Team's third report (S/2005/572, annex II), remain pending. No substantial developments have occurred in the case filed by Yasin Al-Qadi; in the other matter, Nasco Nasreddin Holding AS has added both the Turkish Ministry of Foreign Affairs and Ministry of Finance as parties (the litigation originally had been filed only against the Office of the Prime Minister).

F. United States of America

12. United Nations-listed parties had filed five cases challenging their designations in the United States, but there has been no significant change in the status of litigation since the Team's last report. Three of the cases were dismissed years ago, and the other two remain pending.

13. In a sixth case indirectly affecting the sanctions, plaintiffs had challenged a United States Government policy requiring certain charities to certify that they do not knowingly employ individuals on relevant terrorism lists or contribute funds to terrorists. After the Government published regulations stipulating that such charities must certify that they comply with the terrorism laws of the United States, the parties agreed to dismiss the case.